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## Federal Courts and State Decisions: Part I

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# ST. LOUIS LAW REVIEW

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## FEDERAL COURTS AND STATE DECISIONS.

### PART I.

In the present and succeeding articles, it is proposed to set forth in a complete, if somewhat deliberate fashion, the decisions of the Supreme Court of the United States respecting the duty of the federal courts, exercising original jurisdiction in matters of substantive law to follow the decisions of the state courts; beginning with the establishment of the government and running substantially down to the present time. The intrinsic difficulty of connected and demonstrative treatment has proven unexpectedly great; but no complete collection of these cases has ever been made and the writer has felt and still feels that it is of practical as well as historical value to observe the courses and variations pursued by our greatest tribunal in dealing with a question of public policy so important and so widely affecting private interests.

The first great land mark erected by the Supreme Court in its development of what is in real effect a federal common law is the case of *Swift vs. Tyson*, decided at the January Term, 1842. The first case of any character decided by the Supreme Court was in 1792; so that *Swift vs. Tyson* was enunciated fifty years after the Court has actually begun its contributions to jurisprudence.

Prior to the year 1816, the Supreme Court had referred to the duty of conformity with state decisions in matters of substantive law but seven times. It is worthy of especial remark that Chief Justice **Marshall** can be accused of no overweening federal proclivities in

this respect, but was always particularly considerate of the rights of the states throughout that wonderful period during which he held the unquestioned hegemony of the bench; and that it was Taney who sat silent and concurring while Storey erected the formal substructure of the federal common law. In the first case in which the question was considered (*Telfair vs. Stead's Executors*, 2 Cranch, *l. c.* 418), Marshall stated that the only doubt entertained by the Court had been as to the laws of Georgia; but that the court had received information as to the construction given by the courts of that state to the statute of 5 George II., relative to the charging of lands with the debts of a decedent; and affirmed the decrees below in accordance with the state construction. The information of which the Court speaks does not appear to have been a reported judicial decision.

In dealing with an attachment act in *Pollard vs. Dwight*, (4 Cranch, *l. c.* 429) the Chief Justice declared that the court must certainly be guided by the state's construction of its own statutes. He again asserted in *McKeen vs. Delancey's Lessee* (5 Cranch, *l. c.* 32), that in construing the statutes of a state on which land titles depended, it would cause infinite mischief for the federal court to observe a rule different from that which was long established in the state courts; and accepted (in the absence of reported decisions) the statements of the lower court and the assertions of counsel as to what was the established state construction. Again, in *Bodley vs. Taylor* (5 Cranch, *l. c.* 222), he declared that in inquiring into the right of successive patentees of land, the court would pay great respect to all those principles of law which appeared to be well established in the state; and held, accordingly, that the federal courts must follow the state courts in permitting the assertion, in a court of chancery, of an equitable title antedating the issuance of the patent; and that the sufficiency of calls in an entry must be decided in accordance with the settled state system. In *Taylor vs. Brown* (5 Cranch, *l. c.* 255-256), he re-stated the foregoing principles in the same general manner. In *Polk's Lessee vs. Wendell* (9 Cranch, *l. c.* 98) involving the same propositions, he declared that "in cases depending upon the statutes of a state, and more especially in those respecting titles to land, this court adopts the construction of the state where that construction is settled, and can be ascertained." In *Finley vs. Williams* (9 Cranch, *l. c.* 168), the question arose as to the priority of county court certificates of preemption over elder patents, and the Chief Justice again asserted that the court would not willingly depart from the state decisions where they had settled the question one way

or the other; and that they were prepared to defer their own determination until they could obtain more certain information as to the state rule, had the point appeared controlling.

In *Matson vs. Hord* (1 Wheat., *l. c.* 132), Marshall asserts, in a case involving the construction of a state statute relative to the description in land warrants, the court's "constant solicitude for the true spirit of the law as settled in the state tribunals \* \* \* and has conformed its judgments to the rules of those tribunals whenever it has been able to find them established." In *Danforth's Lessee vs. Thomas* (1 Wheat., *l. c.* 158), Justice Todd, in considering what lands were subject to entry under state statute, was controlled by a single state decision, saying: "This is a decision directly in point made by the Supreme Court of the state construing the laws brought into the view of this court, and is decisive of this case." In an immediately succeeding case (*Mutual Assurance Society vs. Watts*, 1 Wheat., *l. c.* 291), the language of Justice Johnson, considering the liability of lands under a statutory mutual insurance scheme, is much more guarded. "This court uniformly acts under the influence of a desire to conform its decisions to those of the state courts upon their local laws; and would not hesitate to pay great respect to those decisions if they had appeared to reach the question now under consideration." In *Patton's Lessee vs. Easton* (1 Wheat., *l. c.* 481), Marshall treats two decisions made by the Supreme Court of Tennessee *after* the decision below, as settling the construction of a statute of limitations, although he indicates pretty clearly that the Supreme Court was convinced of the soundness of such construction. In *Shipp vs. Miller's Heirs* (2 Wheat., *l. c.* 225), a single decision (dealing with the question when surveys under entry must be completed) was thus treated by Justice Story: "This is a decision upon a local law, which forms a rule of property; and this court has always held in highest respect decisions of state courts on such subjects. We are satisfied it is a reasonable interpretation of the statute and upon principle or authority see no ground for drawing it into doubt." In *Johnson vs. Pannell's Heirs* (2 Wheat *l. c.* 210), Marshall stated that the court would regard as much as the Kentucky courts themselves the system of land laws erected by the decisions of those tribunals. In *Polk's Lessee vs. Wendell* (5 Wheat *l. c.* 302-306), Justice Johnson further exhibits his caution in a case of statutory construction by saying: "The sole object for which jurisdiction of cases between citizens of different states is vested in the courts of the United States is to secure to all the administration of justice upon

the same principles upon which it is administered between citizens of the same state. Hence, this court has never hesitated to conform to the settled doctrines of the states upon landed property where they are fixed and can be satisfactorily ascertained; nor would it ever be led to deviate from them in any case that bore the semblance of impartial justice. \* \* \* We will respect the decisions of the state tribunals, but there are limits which no court can transcend." In *Thatcher vs. Powell* (6 Wheat, *l. c.* 127), considering the construction of a state statute regulating tax sales, Judge Marshall said: "In construing the acts of the legislature of a state, the decisions of the state tribunals have always governed this court;" following a single decision of the Tennessee Supreme Court which, however, the court deemed plainly correct. In *Preston's Heirs vs. Bowmar* (6 Wheat, *l. c.* 583), an ejectment case depending upon the construction of a survey and entry, Story states that an earlier ejectment suit between the same parties and involving the same question has been determined in the state court. "It would be a great mischief for the same title to be in perpetual litigation from conflict in opinion between the courts of the state and federal courts, and we, therefore, acquiesce in the opinion of the Court of Appeals upon the ground that the point is one of local law, has been fully considered in that court, and is a construction which can not be pronounced unreasonable or founded in clear mistake."

In *Blunt vs. Smith* (7 Wheat., *l. c.* 280), Marshall was dealing with the effect, upon a prior appropriation, of a subsequent correction in an entry. "Upon principles of reason and common justice, we can feel no difficulty on this point. But we are relieved from considering it by the decisions which have already taken place in Tennessee." In *Daly's Lessee vs. James* (8 Wheat., *l. c.* 535), the question was as to whether in a particular will the word "heirs" should be construed as a word of limitation. Justice Washington expressed himself as follows: "On a question of so much doubt this court, which always listens with respect to the adjudications of the courts of the different states where they apply, is disposed on this point to acquiesce in the decisions of the Supreme Court of Pennsylvania in the case of *Smith's Lessee vs. Follwell*, that the word 'heirs' should be construed to be a word of limitation." Justice Johnson dissented in the following terms: "As precedents entitled to high respect, the decisions of the state courts will always be considered; and in all cases of local law we acknowledge an established and uniform course of decision in the state courts, in the respective states, as the law of this

court; that is to say, that such decisions will be as obligatory on this court as they would be acknowledged to be in their own courts. But a *single* decision on the construction of a will cannot be acknowledged as of binding efficacy, however it may be respected as precedent."

In *Elmendorf vs. Taylor* (10 Wheat., *l. c.* 159), the question involved was as to whether or not under particular state statutes a survey operated as constructive notice. Marshall delivered the opinion of the court as follows: "Were this question now for the first time to be decided, a considerable contrariety of opinion respecting it would prevail in the court; but it will be unnecessary to discuss it if the point appears to be settled in Kentucky. This court has uniformly expressed its disposition in cases depending upon the laws of a particular state to adopt the construction which the courts of the state have given to those laws. This court's course is founded on the principle, supposed to be universally recognized, that the judicial department of every government where such department exists, is the appropriate organ for construing the legislative acts of that government. Thus no court in the universe which professes to be governed by principle would, we presume, undertake to say that the courts of Great Britain or France or of any other nation had misunderstood their own statutes and, therefore, erect itself into a tribunal which should correct such misunderstanding. We receive the construction given by the courts of the nation as the true sense of the law and feel ourselves no more at liberty to depart from that construction than to depart from the words of the statute. On this principle the construction given by this court to the Constitution and laws of the United States is received by all as the true construction, and on the same principle, the construction given by the courts of the several states to the legislative acts of those states is received as true, unless they come in conflict with the Constitution, laws or treaties of the United States. If, then, this question has been settled in Kentucky, we must suppose it to be rightly settled." The court, upon examining the decisions of the courts of Kentucky, found that they had been variant and conflicting up to the year 1813; but that from 1813 to 1825 (the date of the decision) there had been a uniform construction of the statute; and that this construction during the past twelve years must be considered as finally settled, even though this court should doubt its correctness. (*l. c.* 164-165). In *McDowell vs. Peyton* (10 Wheat., *l. c.* 460), the court was confronted with the question whether or not an entry was sufficiently certain or so vague as to be invalid. Marshall said: "Had it been now for the first time

brought before a court for adjudication, it is liable to such great and serious objections that it would most probably be pronounced invalid, but the highest court of Kentucky has already given its decision; and this court has always conformed to that construction of the legislative acts of a state which has been given by its own courts. The general principle is entitled to peculiar consideration when it applies to an act which regulates titles to lands." In that case, the court followed a Kentucky decision which was made by two judges out of four (the other two having disqualified themselves), but which decision had remained unquestioned for a period of seventeen years. In *Brooks vs. Marbury* (11 Wheat., *l. c.* 82), the question arose whether a copy of a deed was admissible under the Maryland statutes without accounting for the original. A single Maryland decision was cited but the court said that they were not satisfied that the principle was settled and that the case cited arose on the conclusiveness and not on the admissibility of the evidence. "It is true that in deciding against its conclusiveness the court said generally that a copy is *prima facie* evidence in all cases where the law directs an instrument in writing to be recorded. This is a particular act, and we understand that the courts of Maryland have not adhered uniformly to the principle thus laid down." In *Doe vs. Robertson* (11 Wheat., *l. c.* 360), the court considered the validity of a junior grant as against a senior patent under a state statutory system and concluded its opinion thus: "So far this court has considered the cause as one of a new impression; but on examining the adjudications quoted, they are satisfied that in every point material to the plaintiffs, the case has been adjudicated in Kentucky, and they will, therefore, direct that an opinion be certified in favor of the plaintiff." In *Shelby vs. Guy* (11 Wheat., *l. c.* 361), the statute of limitations was set up in a suit for a slave; and the precise question was as to the interpretation to be given to the saving clause "beyond seas." The Supreme Court of the United States had interpreted these words some eight years before in a similar statute. "But we are now informed, and as it is admitted by opposite counsel we can not question it, that a contrary adjudication has taken place in the courts of Tennessee within the last year for the first time. It is obvious that without a particular report of that adjudication, this court could not now act finally upon its authority. But if the majority of the court were of opinion that an isolated decision on a point thus circumstanced ought to control the previous decision of

this court, the course would undoubtedly be to hold up this cause for advisement.

"That the statute laws of the states must furnish the rule of decision to this court as far as they comport with the Constitution of the United States in all cases arising within the respective states is a position that no one doubts. Nor is it questionable that a fixed and received construction of their respective statute law in their own courts makes it in fact a part of the statute law of the states, however we may doubt the propriety of that construction. It is obvious that this admission may at times involve us in seeming inconsistencies; as where states have adopted the same statutes and their courts differ in the construction. Yet that course is necessarily indicated by the duty imposed upon us to administer as between certain individuals the laws of the respective states according to the best light we possess of what those laws are. This court has uniformly manifested its respect for the adjudications of the state tribunals and will be very moderate in those claims which may be preferred upon the ground of comity. Yet in a case like the one now occurring, it cannot acknowledge the objection to go farther, at present, than to examine the decision formerly rendered on the construction of these words. We have reflected, and heard arguments on our former decision, and no doubt has been entertained, except on the question how far we were bound to surrender an opinion, under the actual state of difference existing between our construction and that of the state from which this cause comes." Inasmuch as the case was reversed upon other grounds, the court said that it would waive a positive decision upon the point, trusting that the courts of Tennessee would in due time furnish light upon what was the fixed law of that state. It is not surprising to note that the decision was by Justice Johnson, although no dissenting opinion appears.

In *Jackson vs. Chew* (12 Wheat., l. c. 153), the court was interpreting a will with reference to the estates created thereby. "The inquiry is very much narrowed by applying the rule which has uniformly governed this court that where any principle of law establishing a rule of real property has been settled in the state courts, the same rule will be applied by this court that would be applied by the state tribunals." It appeared that this identical will had been before the courts of New York twice and that the same determination had been made in each case; that identical clauses in other wills had been before the court two or three times and had been determined



in the same way. The court said: "And it will be seen by reference to the decisions of this court that to establish a contrary doctrine here would be repugnant to the principles which have always governed this court in like cases. It has been urged, however, in the case at bar, that this court applies this principle only to state constructions of their own statutes. It is true, that many of the cases in which this court has deemed itself bound to conform to state decisions, have arisen on the construction of statutes. But the same rule has been extended to other cases; and there can be no good reason assigned why it should not be, when it is applying settled rules of real property. This court adopts the state decisions because they settle the law applicable to the case; and the reasons assigned for this course apply as well to rules of construction growing out of the common law, as the statute law of the state, when applied to the title of lands. \* \* \* We do not feel ourselves at liberty to treat it as an open question."

*Bell vs. Morrison* (1 Peters, *l. c.* 360-363), was an action of assumpsit to recover the value of certain personal property. The defense was the statute of limitations. The English decisions were clear as to the proper interpretation of the English statute which was in substantially identical terms. The court said that they were not entitled to be considered as conclusive authority; "For this justly belongs to the local state tribunals whose rules and interpretation must be presumed to be founded upon a more just and accurate view of their own jurisprudence than those of any foreign tribunal. If, therefore, upon examination it was found that the doctrines of Kentucky courts upon this subject are irreconcilable with those deduced from the statute of James, this court would, in conformity with its general practice, follow the local law and administer the same justice which the state court would administer between the same parties. \* \* \* There is a series of decisions of the Kentucky courts upon the construction of their own statute of limitations which if they differ from those of other courts would as a matter of local law govern this court upon the present occasion. In the construction of local statutes we have been in the habit of respecting and following the judgments of local tribunals." The court at the conclusion of its decision says that the opinion was not that of the majority of the court, and had been principally, although not exclusively, influenced by the decisions in Kentucky on this subject.

D'Wolf *vs.* Rabaud (1 Peters, *l. c.* 501), was a personal action in which the construction of the state statute of frauds was involved. "What might be our own view of the question, unaffected by any local decision, it is unnecessary to say; because the decisions in New York upon the construction of its own statute, and the extent of the rules deduced from it, furnish in the present case a clear guide for this court. \* \* \* It seems to us a reasonable doctrine, founded in good sense and convenience, intending rather to suppress than to encourage fraud. But whether so or not, it sustains the opinion of the Circuit Court in a manner entirely free from exception." The decision was made upon the strength of three state cases. In Davis *vs.* Mason (1 Peters, *l. c.* 509), the court followed two state decisions, eight and six years old respectively, as to the evidence required to establish a will of lands, saying: "The identity of the certificates and the facts in this case with those in the case of Harper *vs.* Wilson (one of the state cases) leaves nothing for this court to deliberate upon." In Waring *vs.* Jackson (1 Peters, *l. c.* 571), the court reiterates its decision to follow the state courts in the construction of a will where that construction has become a fixed rule of landed property within the state. In Gardner *vs.* Collins (2 Peters, 85), the question was with respect to the construction of the statute of descents. The court said: "If this question had been settled by any judicial decision in the states where the land lies, we should, upon the uniform principles adopted by this court, recognize that decision as a part of the local law. If this had been an ancient statute and the uniform course of professional opinion and practice had long prevailed in the interpretation of it, that would be respected as almost of equal authority."

In Patterson *vs.* Jenks (2 Peters, *l. c.* 230), Marshall said: "If the state of Georgia had construed this treaty by any subsequent acts manifesting her understanding of it, we should not hesitate to adopt that construction in this case. But the bill of exceptions contains no fact showing that Georgia has adopted any construction of her treaties with the Indians." In Bank *vs.* Wister (2 Peters, *l. c.* 324), Kentucky decisions maintained that a corporation could contract only under seal, but Justice Johnson (persistent in his former attitude) said "The court declares it unnecessary at this time to enter into the inquiry how far its decisions and those of other states upon a question of a general, not a local case or character, are to be controlled by those of any particular state." The statutes there made any decision on this point unnecessary. In Bank *vs.* Dudley's Lessee

(2 Peters, *l. c.* 520-522), the question was as to the power of an inferior state court to make an order of sale at one term as of another and dependent entirely upon state statute. The Supreme Court held the case over for a term, awaiting the decision of the state court. Marshall said: "The power of the inferior courts of a state to make an order at one term, as of another, is of a character so peculiarly local, a proceeding so necessarily dependent upon the judgment of the revising tribunal of the state, that a majority consider that judgment as authority and we are disposed to conform to it." In *Wilkinson vs. Leland* (2 Peters, *l. c.* 656), the question was as to the power of a state legislature to confirm a probate court sale; and Story said: "We must decide this objection not upon principles of public policy, but of power; and precisely as the state court of Rhode Island itself ought to decide it." In *Beach vs. Viles* (2 Peters, *l. c.* 675), the same judge adopted without question the state construction of its attachment law.

In fairness to Justice Johnson, it should be observed that in *Wilkinson vs. Watkins* (3 Peters, *l. c.* 55), where the Supreme Court reversed his decision on circuit, he explosively insisted that "it ought not to be controverted that as to what are the laws of real estate in the respective states, the decisions of every other state in the Union, or in this universe, are worth nothing against the decisions of the state where the land lies. Upon such a subject we have just as much right to repeal their statutes as to overrule their decisions."

In *Inglis vs. Sailors' Snug Harbor* (3 Peters, *l. c.* 127), the court follows an express adjudication of the state supreme court in holding a right of entry devisable, saying: "This being a question depending upon the construction of a state statute with respect to the title to real property, it has been the uniform course of this court to apply the same rule that we find applied by the state tribunal in like cases." In *United States vs. Morrison* (4 Peters, *l. c.* 137), the lower court had construed a statute providing for a judgment lien; and pending the appeal, the state supreme court had elaborately and deliberately decided one case to the contrary. Marshall said: "This court according to its uniform course adopts that construction of the act which is made by the highest court of the state;" and reversed the decision. In *Banks vs. Tyler* (4 Peters, *l. c.* 382), the court followed the established state construction of a law providing for the assignment of promissory notes and the rights and duties of assignees. "These rules are the law of this case, and although in our opinion they carry the doctrine of diligence to an extent unknown

to the principles of the common law, or the law of other states, where bonds, notes and bills are assignable, we must adopt them as the guide of our judgment." In *Henderson vs. Griffin* (5 Peters, *l. c.* 155-156), a construction of a state limitation act by one state decision was deemed conclusive; and a single decision interpreting a will was held to establish a rule of property as laid down in *Jackson vs. Chew*.

In *Hinde vs. Vattier's Lessee* (5 Peters, *l. c.* 401), the court held the book called the *Land Laws of Ohio* sufficient evidence of a federal grant; and the Supreme Court said that no principle was better established or more uniformly adhered to than that the circuit courts in deciding on titles to real property were bound to decide precisely as the state courts ought to do; and that consequently a federal court must admit the book in evidence just as it was the practice of the Ohio courts to do.

In *Hawkins vs. Barney's Lessee* (5 Peters, *l. c.* 469), the court said: "It has been solemnly decided in a series of cases in Kentucky that the party offering in evidence a conveyance containing such exceptions is bound to show that the trespass proved is without the limitations of the land so sold or accepted; \* \* \* and this we conceive to be no longer an open question." In *Ross vs. M'Lung* (6 Peters, *l. c.* 286), the state construction of an act requiring registration of deeds was thus considered: "Whatever might have been our opinion on the case had it remained open for consideration, the peace of society and the security of title require that we should conform to the construction which has been made in the courts of the state if we can discern what that construction is."

In *Greene vs. Neal's Lessee* (6 Peters, 291), the question concerned the interpretation of the state statute of limitations respecting lands. The Supreme Court of the state, in two earlier cases, had construed the statute, and this construction had been subsequently followed by the Supreme Court of the United States. Four years before the present case, the Supreme Court of the state had changed its former ruling and in an elaborate opinion had established a new rule, and since this last decision there had been a general acquiescence as to the point in all the courts of the state. The Supreme Court of the United States held that they would follow the last construction, saying: "Would not a change in the construction of a law of the United States by this tribunal be obligatory on the state courts? The statute, as last expounded, would be the law of the Union; and why may not the same effect be given to the last exposition of a local law by the state court? The

exposition forms a part of the local law and is binding upon the people of the state and its inferior judicial tribunals. It is emphatically the law of the state which the federal court, while sitting within the state, and this court, when called before them, are called upon to enforce."

In *Livingstone's Lessee vs. Moore* (7 Peters, *l. c.* 542), the Supreme Court followed two decisions of the state court as to the validity and effect of statutes establishing liens upon lands; the court saying: "Now the relation in which our circuit court stands to the states in which they respectively sit and act is precisely that of their own courts, especially when adjudicating on cases where state lands or state statutes come under adjudication. When we find principles distinctly settled by adjudication and known and acted upon as the law of the land, we have no more right to question them or to deviate from them than could be correctly exercised by their own tribunals." In *M'Cutcheon vs. Marshall* (8 Peters, *l. c.* 241), a statute relating to emancipation was in question and the court said, referring to one decision about eight years old: "This is a judicial interpretation by the highest court of the state of one of its own statutes which has always been held by this court as conclusive; especially as such interpretation has not been called in question in its own tribunals and no case has been referred to tending in any measure to shake this decision." In *Bank vs. Daniel* (12 Peters, *l. c.* 53), the court followed a single state decision seventeen years old in construing a state statute dealing with the damages for dishonor of commercial paper. In *Games vs. Stiles* (14 Peters, *l. c.* 328), the court declared that there can be no class of laws more strictly local in their character and which more directly concern real property than those imposing a tax on lands and regulating its collection. In *Groves vs. Slaughter* (15 Peters, *l. c.* 497-498), the court refused to follow the construction of a state constitution where there had been but one state decision where the views of the judges were *obiter dicta* and widely divergent.

The foregoing is believed to constitute a substantially complete and accurate statement of the decisions of the Supreme Court down to *Swift vs. Tyson*.

The discussion of that and subsequent cases must be taken up in the next issue.\*

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\**Robinson v. Campbell*, 3 Wheat. 212; *U. S. v. Howland*, 4 Wheat. 108; *Boyle v. Zacharie*, 6 Peters 648; *Livingston v. Story*, 9 Peters 632, have been purposely omitted, because they are purely procedural, when properly understood. These cases will be distinguished hereafter, when we reach a case squarely dealing with the duty of following state courts in matters of equity.