that in applying the doctrine this Court and the lower courts have invaded rights which in our opinion are reserved by the Constitution to the several States." [1109]

Third, the rule of *Erie* replacing *Tyson* is that "[e]xcept in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. Whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern." [1110]

Since 1938, the effect of *Erie* has first increased and then diminished, as the nature of the problems presented changed. Thus, the Court at first indicated that not only were the decisions of the highest court of a state binding on a federal diversity court, but also decisions of intermediate appellate courts [1111] and courts of first instance,[1112] even where the decisions bound no other state judge except as they were persuasive on their merits. It has now retreated from this position, concluding that federal judges are to give careful consideration to lower state court decisions and to old, perhaps outmoded decisions, but that they must find for themselves the state law if the state's highest court has not spoken definitively within a period that would raise no questions about the continued viability of the decision.[1113] In the event of a state supreme court reversal of an earlier decision, the federal courts are, of course, bound by the later decision, and a judgment of a federal district court, correct when rendered, must be reversed on appeal if the state's highest court in the meantime has changed the applicable law.[1114] In diversity cases that present conflicts of law problems, the Court has reiterated that the district court is to apply the law of the state in which it sits, so that in a case in State A in which the law of State

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[1109] 304 U.S. at 79–80.

[1110] 304 U.S. at 78. *Erie* applies in equity as well as in law. Ruhlin v. New York Life Ins. Co., 304 U.S. 202 (1938).

[1111] West v. American Tel. & Tel. Co., 311 U.S. 223 (1940); Six Companies of California v. Joint Highway District, 311 U.S. 180 (1940); Stoner v. New York Life Ins. Co., 311 U.S. 464 (1940).

[1112] Fidelity Union Trust Co. v. Field, 311 U.S. 169 (1940).

[1113] King v. Order of Commercial Travelers of America, 333 U.S. 153 (1948); Bernhardt v. Polygraphic Co. of America, 350 U.S. 198, 205 (1956) (1910 decision must be followed in absence of confusion in state decisions since there were "no developing line of authorities that cast a shadow over established ones, no dicta, doubts or ambiguities . . . , no legislative development that promises to undermine the judicial rule"). *See also* Commissioner v. Estate of Bosch, 387 U.S. 456, 465 (1967).

[1114] Vanderbark v. Owens-Illinois Glass Co., 311 U.S. 538 (1941); Huddleston v. Dwyer, 322 U.S. 232 (1944); Nolan v. Transocean Air Lines, 365 U.S. 293 (1961).