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Chisholm Vs. Georgia

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Decided On : 1793

Appeal No. : 2 U.S. 419

Appellant : Chisholm

Respondent : Georgia

Judgement :

Chisholm v. Georgia - 2 U.S. 419 (1793)
U.S. Supreme Court Chisholm v. Georgia, 2 U.S. 2 Dall. 419 419 (1793)

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Iredell, Justice.

This great cause comes before the Court on a motion made by the Attorney General that an order be made by this Court to the following effect:

"That, unless the State of Georgia shall, after reasonable notice of this motion, cause an appearance to be entered on behalf of the said State on the fourth day of next Term, or show cause to the contrary, judgment shall be entered for the plaintiff, and a writ of enquiry shall be awarded."

Before such an order be made, it is proper that this Court should be satisfied it hath cognizance of the suit; for, to be sure, we ought not to enter a conditional judgment (which this would be) in a case where we were not fully persuaded we had authority to do so.

This is the first instance wherein the important question involved in this cause has come regularly before the Court. In the Maryland case it did not, because the Attorney General of the State voluntarily appeared. We could not therefore, without the greatest impropriety, have taken up the question suddenly. That case has since been compromised. But, had it proceeded to trial, and a verdict been given for the plaintiff, it would have been our duty, previous to our giving judgment, to have well

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considered whether we were warranted in giving it. I had then great doubts upon my mind, and should in such a case have proposed a discussion of the subject. Those doubts have increased since, and, after the fullest consideration I have been able to bestow on the subject, and the most respectful attention to the able argument of the Attorney General, I am now decidedly of opinion that no such action as this before the Court can legally be maintained.

The action is an action of assumpsit. The particular question then before the Court is will an action of assumpsit lie against a State? This particular question (abstracted from the general one, *viz.,* whether a State can in any instance be sued?) I took the liberty to propose to the consideration of the Attorney General last Term. I did so because I have often found a great deal of confusion to arise from taking too large a view at once, and I had found myself embarrassed on this very subject until I considered the abstract question itself. The Attorney General

has spoken to it, in reference to my request, as he has been pleased to intimate, but he spoke to this particular question slightly, conceiving it to be involved in the general one; and after establishing, as he thought, that point, he seemed to consider the other followed of course. He expressed, indeed, some doubt how to prove what appeared so plain. It seemed to him (if I recollect right) to depend principally on the solution of this simple question: can a State assume? But the Attorney General must know that, in England, certain judicial proceedings not inconsistent with the sovereignty may take place against the Crown, but that an action of assumpsit will not lie. Yet surely the King can assume as well as a State. So can the United States themselves, as well as any State in the Union. Yet the Attorney General himself has taken some pains to show that no action whatever is maintainable against the United States. I shall therefore confine myself, as much as possible, to the particular question before the Court, though everything I have to say upon it will effect every kind of suit the object of which is to compel the payment of money by a State.

The question, as I before observed, is will an action of assumpsit lie against a State? If it will, it must be in virtue of the Constitution of the United States and of some law of Congress conformable thereto. The part of the Constitution concerning the Judicial Power is as follows, *viz:*

"Art.3. sect. 2. The Judicial Powser shall extend"

"(1) To all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;"

"(2) To all cases affecting Ambassadors, or other public Ministers, and Consuls;"

"(3) To all cases of Admiralty and Maritime Jurisdiction;"

"(4) To controversies to which the

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United States shall be a party;"

"(5) To controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State, claiming lands under grants of different States, and between a State or the citizens thereof and foreign states, citizens or subjects."

The Constitution therefore provides for the jurisdiction wherein a State is a party in the following instances: 1st. Controversies between two or more States. 2nd. Controversies between a State and citizens of another State. 3rd. Controversies between a State, and foreign states, citizens, or subjects. And it also provides that, in all cases in which a State shall be a party, the Supreme Court shall have original jurisdiction.

The words of the general Judicial Act conveying the authority of the Supreme Court under the Constitution, so far as they concern this question, are as follow:

"Sect. 13. That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, and except also between a State and citizens of other States, or aliens, in which latter case it shall have original, but not exclusive jurisdiction. And shall have, exclusively, all jurisdiction of suits or proceedings against Ambassadors, or other public Ministers, or their domestics, or domestic servants, as a court of law can have or exercise consistently with the law of nations; and original, but not exclusive jurisdiction of all suits brought by Ambassadors, or other public Ministers, or in which a Consul, or Vice-Consul, shall be a party."

The Supreme Court hath therefore First. Exclusive jurisdiction in every controversy of a civil nature: 1st. Between two or more States. 2nd Between a State and a foreign state. 3rd. Where a suit or proceeding is depending against Ambassadors, other public ministers, or their domestics, or domestic servants. Second. Original, but not exclusive jurisdiction. 1st. Between a State and citizens of other States. 2nd. Between a State and foreign citizens or subjects. 3rd. Where a suit is brought by Ambassadors, or other public ministers. 4th. Where a consul or vice-consul, is a party. The suit now before the Court (if maintainable at all) comes within the latter description, it being a suit against a State by a citizen of another State.

The Constitution is particular in expressing the parties who may be the objects of the jurisdiction in any of these cases, but in respect to the subject matter upon which such jurisdiction is to be exercised, uses the word "controversies" only. The act of Congress more particularly mentions civil controversies, a qualification of the general word in the Constitution which I do not doubt every reasonable man will think well warranted, for it

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cannot be presumed that the general word "controversies" was intended to include any proceedings that relate to criminal cases, which, in all instances that respect the same Government only, are uniformly considered of a local nature, and to be decided by its particular laws. The word "controversy" indeed, would not naturally justify any such construction, but nevertheless it was perhaps a proper instance of caution in Congress to guard against the possibility of it.

A general question of great importance here occurs. What controversy of a civil nature can be maintained against a State by an individual? The framers of the Constitution, I presume, must have meant one of two things: either 1. in the conveyance of that part of the judicial power which did not relate to the execution of the other authorities of the general Government (which it must be admitted are full and discretionary, within the restrictions of the Constitution itself), to refer to antecedent laws for the construction of the general words they use; or, 2. to enable Congress in all such cases to pass all such laws as they might deem necessary and proper to carry the purposes of this Constitution into full effect, either absolutely at their discretion, or at least in cases where prior laws were deficient for such purposes, if any such deficiency existed.

The Attorney General has indeed suggested another construction, a construction, I confess that I never heard of before, nor can I now consider it grounded on any solid foundation, though it appeared to me to be the basis of the Attorney General's argument. His construction I take to be this:

"That the moment a Supreme Court is formed, it is to exercise all the judicial power vested in it by the Constitution, by its own authority, whether the legislature has prescribed methods of doing so, or not."

My conception of the Constitution is entirely different. I conceive that all the courts of the United States must receive not merely their organization as to the number of judges of which they are to consist; but all their authority as to the manner of their proceeding, from the legislature only. This appears to me to be one of those cases, with many others, in which an article of the Constitution cannot be effectuated without the intervention of the legislative authority. There being many such, at the end of the special enumeration of the powers of Congress in the Constitution, is this general one:

"To make all laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

None will deny that an act of Legislation is necessary to say, at least of what number the judges are to consist; the President with the consent of the Senate could not nominate a number at their

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discretion. The Constitution intended this article so far at least to be the subject of a legislative act. Having a right thus to establish the Court, and it being capable of being established in no other manner, I conceive it necessary follows that they are also to direct the manner of its proceedings. Upon this authority, there is, that I know, but one limit -- that is, "that they shall not exceed their authority." If they do, I have no hesitation to say that any act to that effect would be utterly void, because it would be inconsistent with the Constitution, which is a fundamental law paramount to all others, which we are not only bound to consult, but sworn to observe; and therefore, where there is an interference, being superior in obligation to the other, we must unquestionably obey that in preference. Subject to this restriction, the whole business of organizing the Courts, and directing the methods

of their proceeding where necessary, I conceive to be in the discretion of Congress. If it shall be found on this occasion or on any other that the remedies now in being are defective for any purpose it is their duty to provide for, they no doubt will provide others. It is their duty to legislate so far as is necessary to carry the Constitution into effect. It is ours only to judge. We have no reason, nor any more right, to distrust their doing their duty than they have to distrust that we all do ours. There is no part of the Constitution that I know of that authorises this Court to take up any business where they left it, and, in order that the powers given in the Constitution may be in full activity, supply their omission by making new laws for new cases -- or, which I take to be the same thing, applying old principles to new cases materially different from those to which they were applied before.

With regard to the Attorney General's doctrine of incidents, that was founded entirely on the supposition of the other I have been considering. The authority contended for is certainly not one of those necessarily incident to all courts merely as such.

If therefore, this Court is to be (as I consider it) the organ of the Constitution and the law, not of the Constitution only, in respect to the manner of its proceeding, we must receive our directions from the legislature in this particular, and have no right to constitute ourselves an *ossicina brevium,* or take any other short method of doing what the Constitution has chosen (and, in my opinion, with the most perfect propriety) should be done in another manner.

But the act of Congress has not been altogether silent upon this subject. The 14th sect. of the Judicial Act provides in the following words:

"All the before mentioned courts of the United States shall have power to issue writs of *fiere facias,* habeas corpus, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective

jurisdictions, and agreeable to the principles and usages of law."

These words refer as well to the Supreme Court as to the other Courts of the United States. Whatever writs we issue that are necessary for the exercise of our jurisdiction must be agreeable to the principles and usages of law. This is a direction, I apprehend, we cannot supersede because it may appear to us not sufficiently extensive. If it be not, we must wait till other remedies are provided by the same authority. From this it is plain that the legislature did not chuse to leave to our own discretion the path to justice, but has prescribed one of its own. In doing so, it has, I think, wisely, referred us to principles and usages of law already well known, and by their precision calculated to guard against that innovating spirit of courts of justice which the Attorney General in another case reprobated with so much warmth, and with whose sentiments in that particular I most cordially join. The principles of law to which references is to be had either upon the general ground I first alluded to, or upon the special words I have above cited from the Judicial Act, I apprehend, can be either, 1st. those of the particular laws of the State against which the suit is brought, or, 2nd., principles of law common to all the States. I omit any consideration arising from the word "usages," though a still stronger expression. In regard to the principles of the particular laws of the State of Georgia, if they in any manner differed, so as to effect this question, from the principles of law common to all the States, it might be material to enquire whether there would be any propriety or congruity in laying down a rule of decision which would induce this consequence -- that an action would lie in the Supreme Court against some States whose laws admitted of a compulsory remedy against their own Governments, but not against others wherein no such remedy was admitted, or which would require, perhaps, if the principle was received, fifteen different methods of proceeding against States, all standing in the same political relation to the general Government, and none having any pretence to a distinction in its favor, or justly liable to any distinction to its prejudice. If any such difference existed in the laws of the different States, there would seem to be a propriety, in order to induce uniformity (if a constitutional power for that purpose exists) that Congress should prescribe a rule, fitted to this new case, to which no equal, uniform, and impartial mode of proceeding could otherwise be applied.

But this point, I conceive, it is unnecessary to determine, because I believe there is no doubt that neither in the State now in question nor in any other in the Union, any particular legislative mode, authorizing a compulsory suit for the recovery of money against a State, was in being either when the Constitution

was adopted, or at the time the Judicial Act was passed. Since that time, an Act of Assembly for such a purpose has been passed in Georgia. But that surely could have no influence in the construction of an act of the Legislature of the United States passed before.

The only principles of law, then, that can be regarded are those common to all the States. I know of none such which can affect this case but those that are derived from what is properly termed "the common law," a law which I presume is the groundwork of the laws in every State in the Union, and which I consider, so far as it is applicable to the peculiar circumstances of the country, and where no special act of legislation controls it, to be in force in each State as it existed in England (unaltered by any statute) at the time of the first settlement of the country. The statutes of England that are in force in America differ perhaps in all the States, and therefore it is probable the common law in each is in some respects different. But it is certain that, in regard to any common law principle which can influence the question before us, no alteration has been made by any statute which could occasion the least material difference, or have any partial effect. No other part of the common law of England, it appears to me, can have any reference to this subject but that part of it which prescribes remedies against the Crown. Every State in the Union, in every instance where its sovereignty has not been delegated to the United States, I consider to be as completely sovereign as the United States are in respect to the powers surrendered. The United States are sovereign as to all the powers of Government actually surrendered: each State in the Union is sovereign as to all the powers reserved. It must necessarily be so, because the United States have no claim to any authority but such as the States have surrendered to them. Of course, the part not surrendered must remain as it did before. The powers of the general Government, either of a legislative or Executive

nature, or which particularly concerns treaties with foreign powers, do for the most part (if not wholly) affect individuals, and not States. They require no aid from any State authority. This is the great leading distinction between the old Articles of Confederation and the present Constitution. The Judicial power is of a peculiar kind. It is indeed commensurate with the ordinary legislative and executive powers of the General Government, and the power which concerns treaties. But is also goes further. Where certain parties are concerned, although the subject in controversy does not relate to any of the special objects of authority of the General Government, wherein the separate sovereignties of the States are blended in one common mass of supremacy, yet the General Government has a judicial authority in regard to such

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subjects of controversy, and the Legislature of the United States may pass all laws necessary to give such judicial authority its proper effect. So far as States under the Constitution can be made legally liable to this authority, so far, to be sure, they are subordinate to the authority of the United States, and their individual sovereignty is in this respect limited. But it is limited no farther than the necessary execution of such authority requires. The authority externals only to the decision of controversies in which a State is a party, and providing laws necessary for that purpose. That surely can refer only to such controversies in which a State can be a part, in respect to which, if any question arises, it can be determined, according to the principles I have supported, in no other manner than by a reference either to preexistent laws or laws passed under the Constitution and in conformity to it.

Whatever be the true construction of the Constitution in this particular -- whether it is to be construed as intending merely a transfer of jurisdiction from one tribunal to another, or as authorizing the legislature to provide laws for the decision of all possible controversies in which a State may be involved with an individual, without regard to any prior exemption -- yet it is certain that the legislature has in fact proceeded upon the former supposition, and not upon the latter. For, besides what I noticed before as to an express reference to principles and usages of law as the guide of our proceeding, it is observable that, in instances like this before the

Court, this Court hath a concurrent jurisdiction only, the present being one of those cases where, by the Judicial Act, this Court hath original, but not exclusive, jurisdiction. This Court, therefore, under that Act, can exercise no authority in such instances but such authority as from the subject matter of it may be exercised in some other court. There are no courts with which such a concurrence can be suggested but the Circuit Courts, or courts of the different States. With the former it cannot be, for admitting that the Constitution is not to have a restrictive operation, so as to confine all cases in which a State is a party exclusively to the Supreme Court (an opinion to which I am strongly inclined), yet there are no words in the definition of the powers of the Circuit Court which give a colour to an opinion that where a suit is brought against a State by a citizen of another State, the Circuit Court could exercise any jurisdiction at all. If they could, however, such a jurisdiction, by the very terms of their authority, could be only concurrent with the courts of the several States. It follows, therefore, unquestionably, I think, that looking at the act of Congress, which I consider is on this occasion the limit of our authority (whatever further might be constitutionally, enacted), we can exercise no authority in the present instance

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consistently with the clear intention of the Act, but such as a proper State Court would have been at least competent to exercise at the time the Act was passed.

If, therefore, no new remedy be provided (as plainly is the case), and consequently we have no other rule to govern us but the principles of the preexistent laws, which must remain in force till superseded by others, then it is incumbent upon us to enquire whether, previous to the adoption of the Constitution (which period, or the period of passing the law in respect to the object of this enquiry, is perfectly equal), an action of the nature like this before the Court could have been maintained against one of the States in the Union upon the principles of the common law, which I have shown to be alone applicable. If it could, I think it is now maintainable here. If it could not, I think, as the law stands at present, it is not maintainable, whatever opinion may be entertained upon the construction of the Constitution as to the power of Congress to authorize such a one. Now I presume it will not be

denied that, in every State in the Union, previous to the adoption of the Constitution, the only common law principles in regard to suits that were in any manner admissible in respect to claims against the State were those which, in England, apply to claims against the Crown, there being certainly no other principles of the common law which, previous to the adoption of this Constitution could, in any manner or upon any colour, apply to the case of a claim against a State in its own courts, where it was solely and completely sovereign in respect to such cases at least. Whether that remedy was strictly applicable or not, still I apprehend there was no other. The only remedy in a case like that before the Court, by which, by any possibility, a suit can be maintained against the Crown in England, or could be at any period from which the common law, as in force in America, could be derived, I believe is that which is called a petition of right. It is stated, indeed, in Com.Dig. 105, that "until the time of Edward I, the King might have been sued in all actions as a common person." And some authorities are cited for that position, though it is even there stated as a doubt. But the same authority adds "but now none can have an action against the King, but one shall be put to sue to him by petition." This appears to be a quotation or abstract from Theloall's Digest, which is also one of the authorities quoted in the former case. And this book appears (from the law catalogue) to have been printed so long ago as the year 1579. The same doctrine appears (according to a quotation in Blackstone's Commentaries, I Vol. 243) to be stated in Finch's Law 253, the first edition of which, it seems, was published in 1579. This also more fully appears in the case of the Bankers, and particularly from the celebrated argument of Lord

Somers, in the time of W. III., for, though that case was ultimately decided against Lord Somers' opinion, yet the ground on which the decision was given no way invalidates the reasoning of that argument so far as it respects the simple case of a sum of money demandable from the King and not by him secured on any particular revenues. The case is reported in Freeman, Vol. 1. p. 331. 5 Mod. 29; Skinn. 601, and lately, very elaborately, in a small pamphlet published by Mr. Hargrave which contains all the reports at length, except Skinner's, together with

the argument at large of Lord Somers, besides some additional matter.

The substance of the case was as follows: King Charles II, having received large sums of money from bankers on the credit of the growing produce of the revenue, for the payment of which tallies and orders of the Exchequer were given (afterwards made transferable by statute), and the payment of these having been afterward postponed, the King at length, in order to relieve the Bankers, in 1677, granted annuities to them, out of the hereditary Excise, equal to 6 percent interest on their several debts, but redeemable on payment of the principal. This interest was paid 'till 1683, but it then became in arrears, and continued so at the Revolution; and the suits which were commenced to enforce the payment of these arrears were the subject of this case. The Bankers presented a petition to the Barons of the Exchequer for the payment of the arrears of the annuities granted, to which petition the Attorney General demurred. Two points were made: first, whether the grant out of the Excise was good; second, whether a petition to the Barons of the Exchequer was a proper remedy. On the first point, the whole Court agreed that, in general, the King could alienate the revenues of the Crown; but Mr. Baron Lechmore differed from the other Barons by thinking that this particular revenue of the Excise was an exception to the general rule. But all agreed that the petition was a proper remedy. Judgment was therefore given for the petition by directing payment to the complainants at the receipt of the Exchequer. A writ of error was brought on this judgment by the Attorney General in the Exchequer Chamber. There, all the judges who argued held the grant out of the Excise good. A majority of them, including Lord Chief Justice Holt, also approved of the remedy by petition to the Barons. But Lord Chief Justice Treby was of opinion that the Barons of the Exchequer were not authorised to make order for payments on the receipt of the Exchequer, and therefore that the remedy by petition to the Barons was inapplicable. In this opinion, Lord Somers concurred. A doubt then arose whether the Lord Chancellor and Lord High Treasurer were at liberty to give judgment according to their own

opinion, in opposition to that of a majority of the attendant judges; in other words, whether the judges called by the Lord Chancellor and Lord High Treasurer were to be considered as mere assistants to them, without voices. The opinion of the judges being taken on this point, seven against three held that the Lord Chancellor and Lord Treasurer were not concluded by the opinions of the judges, and therefore that the Lord Keeper in the case in question, there being then no Lord Treasurer, might give judgment according to his own opinion. Lord Somers concurring in this idea, reversed the judgment of the Court of Exchequer. But the case was afterwards carried by error into Parliament, and there the Lords reversed the judgment of the Exchequer Chamber and affirmed that of the Exchequer. However, notwithstanding this final decision in favour of the Bankers and their creditors, it appears by a subsequent statute that they were to receive only one half of their debts; the 12 and 14 W. 3, after appropriating certain sums out of the hereditary Excise for public uses, providing that, in lieu of the annuities granted to the Bankers and all arrears, the hereditary Excise should, after the 26th of December 1601, be charged with annual sums equal to an interest of three per cent, till redeemed by payment of one moiety of the principal sums. *Hargrave's Case of the Bankers,* 1, 2, 3.

Upon perusing the whole of this case, these inferences naturally follow: 1st. That admitting the authority of that decision in its fullest extent, yet it is an authority only in respect to such cases, where letters patent from the Crown have been granted for the payment of certain sums out of a particular revenue. 2nd. That such relief was grantable in the Exchequer, upon no other principle than that that Court had a right to direct the issues of the Exchequer as well after the money was deposited there as while (in the Exchequer language) it was *in transitu.* 3rd. That such an authority could not have been exercised by any other court in Westminster Hall, or by any court that, from its particular constitution, had no controul over the revenues of the Kingdom. Lord C. J. Holt and Lord Somers (though they differed in the main point) both agreed in that case that the Court of King's Bench could not send a writ to the Treasury. *Hargrave's Case,* 45, 89. Consequently, no such remedy could, under any circumstances, I apprehend, be allowed in any of the American States, in none of which it is presumed any court of justice hath any

express authority over the revenues of the State such as has been attributed to the Court of Exchequer in England.

The observations of Lord Somers concerning the general remedy by petition to the King have been extracted and referred to by some of the ablest law characters since, particularly by

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Lord C. Baron Comyns in his digest. I shall therefore extract some of them, as he appears to have taken uncommon pains to collect all the material learning on the subject, and indeed is said to have expended several hundred pounds in the procuring of records relative to their case. Hargrave's preface to the case of the Bankers.

After citing many authorities, Lord Somers proceeds thus:

"By all these authorities, and by many others which I could cite, both ancient and modern, it is plain that, if the subject was to recover a rent, or annuity, or other charge from the Crown; whether it was a rent or annuity originally granted by the King, or issuing out of lands, which by subsequent title came to be in the King's hands; in all cases, the remedy to come at it was by petition to the person of the King; and no other method can be shown to have been practised at common law. Indeed, I take it to be generally true that, in all cases where the subject is in the nature of a plaintiff, to recover anything from the King, his only remedy, at common law, is to sue by petition to the person of the King. I say, where the subject comes as a plaintiff. For, as I said before, when, upon a title found for the King by office, the subject comes in to traverse the King's title, or to show his own right, he comes in the nature of a defendant, and is admitted to interplead in the case with the King in defense of his title, which otherwise would be defeated by finding the office. And to show that this was so, I would take notice of several instances. That, in cases of debts owing by the Crown, the subject's remedy was by petition appears by *Aynesham's Case,* Ryley 251, which is a petition for 19. due for work done at Carnarvon castle. So Ryley 251. The executors of John Estrateling petition for

132. due to the testator for wages. The answer is remarkable, for there is a latitude taken, which will very well agree with the notion that is taken up in this case; *Habeant bre. de liberate in Canc. thes. & camerar. de 32. in partem solutionis.* So the case of *Yerward de Galeys,* for 56. Ryley 414. In like manner in the same book 253.33. Ed. I. several parties sue by petition for money and goods taken for the King's use, and also for wages due to them, and for debts owing to them by the King. The answer is, *Rex ordinavit per concilium thesaurarii & baronum de scaecario, quod satisfiet iis quam citius fieri poterit; ita quod contertos se tenebunt.* And this is an answer given to a petition "

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presented to the King in Parliament, and therefore we have reason to conclude it to be warranted by law. They must be content, and they shall be paid, *quam citius fieri poterit.* The parties in these cases first go to the King by petition: it is by him they are sent to the Exchequer, and it is by writ under the great seal that the Exchequer is impowered to act. Nor can

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any such writ be found (unless in a very few instances, where it is mere matter of account) in which the Treasurer is not joined with the Barons. So far was it from being taken to be law at that time that the Barons had any original power of paying the King's debts, or of commanding annuities, granted by the King or his progenitors to be paid when the person applied to them for such payment. But perhaps it may be objected that it is not to be inferred, because petitions were brought in these cases, that therefore it was of necessity that the subject should pursue that course, and could take no other way. It might be reasonable to require from those who object thus that they should produce some precedents at least, of another remedy taken. But I think there is a good answer to be given to this objection. All these petitions which I have mentioned are after the Stat. 8 Ed. I., Ryley 442, where notice is taken that the business of Parliament is interrupted by a multitude of petitions, which might be redressed by the Chancellor and Justices. Wherefore it is thereby enacted that petitions which touch the seal shall come first

to the Chancellor; those which touch the Exchequer, to the Exchequer; and those which touch the Justices, or the law of the land, should come to the Justices; and if the business be so great, or *st de grace* that the Chancellor, or others, cannot do them without the King, then the petitions shall be brought before the King to know his pleasure, so that no petitions come before the King and his Council but by the hands of the Chancellor, and other chief Ministers; that the King and his Council may attend the great affairs of the King's Realm, and his sovereign dominions.

"This law being made, there is reason to conclude that all petitions brought before the King or Parliament after this time, and answered there, were brought according to the method of this law, and were of the nature of such petitions as ought to be brought before the person of the King. And that petitions did lie for a chattel, as well as for a freehold, does appear, 37 Ass. pl ii. Bro.Pet. 17. If tenant by the statute merchant be ousted, he may have petition, and shall be restored. *Vide* 9 H.4.4. Bro.Pet. 9. 9. H. 6. 21. Bro.Pet. 2. If the subject be ousted of his term, he shall have his petition. 7. H.7.ii. Of a chattel real, a man shall have his petition of right, as of his freehold. 34. H. 6.51. Bro.Pet. 3. A man shall have a petition of right for goods and chattels, and the King indorses it in the usual form. It is said indeed, 1 H.7.3. Bro.Pet. 19., that a petition will not lie of a chattel. And, admitting there was any doubt as to that point, in the present suit, we are in the case of a freehold."

Lord Somers' argument in *Hargrave's Case of the Bankers,* 103 to 105.

The solitary case, noticed at the conclusion of Lord Somers' argument, "that a petition will not lie of a chattel," certainly

is deserving of no consideration, opposed to so many other instances mentioned, and unrecognized (as I believe it is) by any other authority either ancient or modern, whereas the contrary, it appears to me, has long been received and established law. In Comyns' Dig. 4 Vol. 458, it is said expressly "suit shall be to the King by petition, for goods as well as for land." He cites Staundf.Prar. 75. b. 72. b.

for his authority, and takes no notice of any authority to the contrary. The same doctrine is also laid down with equal explicitness, and without noticing any distinction whatever, in Blackstone's Commentaries, 3 Vol. 256, where he points out the petition of right as one of the common law methods of obtaining possession or restitution from the Crown, either of real or personal property, and says expressly the petition of right

"is of use where the King is in full possession of any hereditaments or chattels, and the petitioner suggests such a right as controverts the title of the Crown, grounded on facts disclosed in the petition itself."

I leave out of the argument, from which I have made so long a quotation, everything concerning the restriction on the Exchequer so far as it concerned the case then before the Court, as Lord Somers (although more perhaps by weight of authority than reasoning) was overruled in that particular. As to all others, I consider the authorities on which he relied, and his deduction from them, to be unimpeached.

Blackstone, in the first volume of his commentaries (p. 203), speaking of demands in point of property upon the King, states the general remedy thus:

"If any person has, in point of property, a just demand upon the King, he must petition him in his Court of Chancery, where his Chancellor will administer right, as a matter of grace, though not upon compulsion. [For which he cites Finch L. 255.] . . . And this is exactly consonant to what is laid down by the writers on natural law. A subject, say Puffendorf, so long as he continues a subject, hath no way to oblige his Prince to give him his due when he refuses it, though no wise Prince will ever refuse to stand to a lawful contract. And if the Prince gives the subject leave to enter an action against him upon such contract in his own courts, the action itself proceeds rather upon natural equity than upon the municipal laws. For the end of such action is not to compel the Prince to observe the contract, but to persuade him."

It appears that when a petition to the person of the King is properly presented, the usual way is for the King to indorse or underwrite, *soit droit sait al partie* (let right be done to the party), upon which, unless the Attorney General confesses the suggestion, a commission is issued to enquire into the truth of it, after the return of which, the King's attorney is at liberty to

plead in bar, and the merits shall be determined upon issue or demurrer, as in suits between subject and subject. If the Attorney General confesses the suggestion there is no occasion for a commission, his admission of the truth of the facts being equally conclusive as if they had been found by a jury. *See* 3 Blackstone's Commentaries 256. and 4 Com. Dig. 458, and the authorities there cited. Though the above-mentioned indorsement be the usual one, Lord Somers, in the course of his voluminous search, discovered a variety of other answers to what he considered were unquestionable petitions of right, in respect to which he observes:

"The truth is, the manner of answering petitions to the person of the King was very various, which variety did sometimes arise from the conclusion of the party's petition, sometimes from the nature of the thing, and sometimes from favour to the person; and according as the indorsement was, the party was sent into Chancery or the other courts. If the indorsement was general, *soit droit fait al partie,* it must be delivered to the Chancellor of England, and then a commission was to go to find the right of the party, and that being found, so that there was a record so rhim, thus warranted, he is let in to interplead with the King; but if the indorsement was special, then the proceeding was to be according to the indorsement in any other Court. This is fully explained by Stamford (Staundfort) in his treatise of the Prerog. c. 22. The case Mich. 10 H. 4.4.no. 8. is full as to this matter. The King recovers in a *quare impedit* by default against one who was never summoned; the party cannot have a writ of deceit without a petition. If then, says the book, he concludes his petition generally ' *que le Roy lui face droit* ' (that the King will cause right to be done) and the answer be general, it must go into the Chancery that the right may inquired of by commission; and, upon the inquest found, an original writ must

be directed to the Justices to examine the deceit; otherwise, the Justices, before whom the suit was, cannot meddle. But if he conclude his petition especially that it may please his Highness to command his Justices to proceed to the examination, and the indorsement be accordingly that had given the Justices a jurisdiction. They might in such case have proceeded upon the petition without any commission, or any writ to be sued out; the petition and answer indorsed giving a sufficient jurisdiction to the Court to which it was directed. And as the book I have mentioned proves this, so many other authorities may be cited."

He accordingly mentions many other instances, immaterial to be recited here, particularly remarking a very extraordinary difference in the case belonging to the revenue, in regard to which he said, he thought there was not an instance to be found where petitions were answered, *soit droit fait aux parties* (let right be done

to the parties). The usual reference appears to have been to the Treasurer and Barons, commanding them to do justice. Sometimes a writ under the great seal was directed to be issued to them for that purpose. Sometimes a writ from the Chancery directing payment of money immediately, without taking notice of the Barons. And other varieties appear to have taken place. *See Hargrave's Case of the Bankers,* p. 73, & *seq.* But in all cases of petition of right, of whatever nature is the demand, I think it is clear beyond all doubt that there must be some indorsement or order of the King himself to warrant any further proceedings. The remedy, in the language of Blackstone, being a matter of grace, and not on compulsion.

In a very late case in England, this point was incidentally discussed. The case I refer to is the case of *Macbeath against Haldimand,* reported first Durnford & East 172. The action was against the defendant, for goods furnished by the defendant's order in Canada, when the defendant was Governor of Quebec. The defence was that the plaintiff was employed by the defendant in his official capacity, and not upon his personal credit, and that the goods being therefore furnished for the use of Government, and the defendant not having undertaken

personally to pay, he was not liable. This defence was set up at the trial on the plea of the general issue, and the jury, by judge Buller's direction, found a verdict for the defendant. Upon a motion for a new trial, he reported particularly all the facts given in evidence, and said his opinion had been at the trial that the plaintiff should be nonsuited;

"but the plaintiff's counsel appearing for their client, when he was called, he left the question to the jury, telling them that they were bound to find for the defendant in point of law. And upon their asking him whether, in the event of the defendant not being liable, any other person was, he told them that was no part of their consideration, but being willing to give them any information, he added that he was of opinion that if the plaintiff's demands were just, his proper remedy was by a petition of right to the Crown. On which they found a verdict for the defendant. The rule for granting a new trial was moved for, on the misdirection of two points. 1st. That the defendant had by his own conduct made himself liable, which question should have been left to the jury. 2ndly. That the plaintiff had no remedy against the Crown by a petition of right, on the supposition of which the jury had been induced to give their verdict. . . . Lord Mansfield, Chief Justice, now declared that the Court did not feel it necessary for them to give any opinion on the second ground. His Lordship said that great difference had arisen since the revolution with respect to the expenditure of the public money. Before that period, all the public supplies were given to the King, who in

his individual capacity contracted for all expenses. He alone had the disposition of the public money. But since that time, the supplies had been appropriated by Parliament to particular purposes, and now, whoever advances money for the public service trusts to the faith of Parliament. That, according to the tenor of Lord Somers' argument in the *Bankers Case,* though a petition of right would lie, yet it would probably produce no effect. No benefit was ever derived from it in the *Bankers Case,* and Parliament was afterwards obliged to provide a particular fund for the payment of those debts. Whether, however, this alteration in the mode of distributing the supplies had made any difference in the law upon this subject it

was unnecessary to determine; at any rate, if there were a recovery against the Crown, application must be made to Parliament, and it would come under the head of supplies for the year."

The motion was afterwards argued on the other ground (with which I have at present nothing to do) and rejected.

In the old authorities, there does not appear any distinction between debts that might be contracted personally by the King for his own private use and such as he contracted in his political capacity for the service of the kingdom. As he had however then fixed and independent revenues, upon which depended the ordinary support of Government as well as the expenditure for his own private occasions, probably no material distinction at that time existed, or could easily be made. A very important distinction may however perhaps now subsist between the two cases, for the reasons intimated by Lord Mansfield; since the whole support of Government depends now on Parliamentary provisions, and, except in the case of the civil list, those for the most part annual.

Thus, it appears that, in England, even in case of a private debt contracted by the King in his own person, there is no remedy but by petition, which must receive his express sanction; otherwise there can be no proceeding upon it. If the debt contracted be avowedly for the public uses of Government, it is at least doubtful whether that remedy will lie; and if it will, it remains afterwards in the power of Parliament to provide for it or not among the current supplies of the year.

Now let us consider the case of a debt due from a State. None can, I apprehend, be directly claimed but in the following instances. 1st. In case of a contract with the legislature itself. 2nd. In case of a contract with the Executive, or any other person, in consequence of an express authority from the legislature. 3rd. In case of a contract with the Executive without any special authority. In the first and second cases, the contract is evidently made on the public faith alone. Every man must know that no suit can lie against a legislative body. His only

dependence therefore can be that the legislature, on principles of public duty, will make a provision for the execution of their own contracts, and if that fails, whatever reproach the legislature may incur, the case is certainly without remedy in any of the courts of the State. It never was pretended, even in the case of the Crown in England, that if any contract was made with Parliament, or with the Crown by virtue of an authority from Parliament, that a Petition to the Crown would in such case lie. In the third case, a contract with the Governor of a State without any special authority. This case is entirely different from such a contract made with the Crown in England. The Crown there has very high prerogatives, in many instances is a kind of trustee for the public interest, in all cases represents the sovereignty of the Kingdom, and is the only authority which can sue or be sued in any manner on behalf of the Kingdom in any Court of Justice. A Governor of a State is a mere Executive officer, his general authority very narrowly limited by the Constitution of the State, with no undefined or disputable prerogatives; without power to effect one shilling of the public money, but as he is authorised under the Constitution, or by a particular law; having no colour to represent the sovereignty of the State, so as to bind it in any manner to its prejudice, unless specially authorised thereto. And therefore all who contract with him do it at their own peril, and are bound to see (or take the consequence of their own indiscretion) that he has strict authority for any contract he makes. Of course, such contract, when so authorised, will come within the description I mentioned of cases where public faith alone is the ground of relief, and the legislative body the only one that can afford a remedy, which, from the very nature of it, must be the effect of its discretion, and not of any compulsory process. If however any such cases were similar to those which would entitle a party to relief by petition to the King in England, that petition being only presentable to him, as he is the sovereign of the Kingdom, so far as analogy is to take place, such petition in a State could only be presented to the sovereign power, which surely the Governor is not. The only constituted authority to which such an application could with any propriety be made must undoubtedly be the legislature, whose express consent, upon the principle of analogy, would be necessary to any further proceeding. So that this brings us (though by a different route) to the same goal -- the discretion and good faith of the legislative body.

There is no other part of the common law, besides that which I have considered, which can by any person be pretended in any manner to apply to this case but that which concerns corporations. The applicability of this, the Attorney General, with great candour, has expressly waved. But as it may be

urged on other occasions, and as I wish to give the fullest satisfaction, I will say a few words to that doctrine. Suppose, therefore ,it should be objected that the reasoning I have now used is not conclusive because, inasmuch as a State is made subject to the judicial power of Congress, its sovereignty must not stand in the way of the proper exercise of that power, and therefore in all such cases (though in no other) a State can only be considered as a subordinate corporation merely. I answer, 1st. That this construction can only be allowed, at the utmost, upon the supposition that the judicial authority of the United States, as it respects States, cannot be effectuated without proceeding against them in that light -- a position I by no means admit. 2nd. That, according to the principles I have supported in this argument, admitting that States ought to be so considered for that purpose, an act of the legislature is necessary to give effect to such a construction, unless the old doctrine concerning corporations will naturally apply to this particular case. 3rd. That, as it is evident the act of Congress has not made any special provision in this case, grounded on any such construction, so it is to my mind perfectly clear that we have no authority, upon any supposed analogy between the two cases, to apply the common doctrine concerning corporations, to the important case now before the Court. I take it for granted that when any part of an ancient law is to be applied to a new case, the circumstances of the new case must agree in all essential points with the circumstances of the old cases to which that ancient law was formerly appropriated. Now there are, in my opinion, the most essential differences between the old cases of corporations to which the law intimated has reference, and the great and extraordinary case of States separately possessing, as to everything simply relating to themselves, the fullest powers of sovereignty, and yet in some other defined particulars subject to a superior power composed out of themselves for the common welfare of the whole. The only law

concerning corporations to which I conceive the least reference is to be had is the common law of England on that subject. I need not repeat the observations I made in respect to the operation of that law in this country. The word "corporations," in its largest sense, has a more extensive meaning than people generally are aware of. Any body politic (sole or aggregate), whether its power be restricted or transcendant, is in this sense "a corporation." The King, accordingly, in England is called a corporation. 10 Co. 29b. So also, by a very respectable author (Sheppard, in his abridgement, 1 Vol. 431) is the Parliament itself. In this extensive sense, not only each State singly, but even the United States may without impropriety be termed "corporations." I have therefore, in contradistinction to this large and indefinite

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term, used the term "subordinate corporations," meaning to refer to such only (as alone capable of the slightest application, for the purpose of the objection) whose creation and whose powers are limited by law.

The differences between such corporations and the several States in the Union, as relative to the general Government, are very obvious in the following particulars. 1st. A corporation is a mere creature of the King, or of Parliament; very rarely of the latter, most usually of the former only. It owes its existence, its name, and its laws, (except such laws as are necessarily incident to all corporations merely as such) to the authority which create it. A State does not owe its origin to the Government of the United States, in the highest or in any of its branches. It was in existence before it. It derives its authority from the same pure and sacred source as itself: the voluntary and deliberate choice of the people. 2nd. A corporation can do no act but what is subject to the revision either of a court of justice or of some other authority within the Government. A State is altogether exempt from the jurisdiction of the Courts of the United States, or from any other exterior authority, unless in the special instances where the general Government has power derived from the Constitution itself. 3rd. A corporation is altogether dependant on that Government to which it owes its existence. Its charter may be forfeited by abuse. Its authority may be annihilated, without abuse, by an act of the legislative body. A

State, though subject in certain specified particulars to the authority of the Government of the United States, is in every other respect totally independent upon it. The people of the State created, the people of the State can only change, its Constitution. Upon this power there is no other limitation but that imposed by the Constitution of the United States: that it must be of the Republican form. I omit minuter distinctions. These are so palpable that I never can admit that a system of law calculated for one of these cases is to be applied, as a matter of course, to the other, without admitting (as I conceive) that the distinct boundaries of law and legislation may be confounded in a manner that would make Courts arbitrary, and in effect makers of a new law, instead of being (as certainly they alone ought to be) expositors of an existing one. If still it should be insisted that. though a State cannot be considered upon the same footing as the municipal corporations I have been considering, yet, as relative to the powers of the General Government, it must be deemed in some measure dependent; admitting that to be the case (which to be sure is, so far as the necessary execution of the powers of the General Government extends), yet in whatever character this may place a State, this can only afford a reason for a new law,

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calculated to effectuate the powers of the General Government in this new case. But it affords no reason whatever for the Court's admitting a new action to fit a case to which no old ones apply, when the application of law, not the making of it, is the sole province of the Court.

I have now, I think, established the following particulars. 1st. That the Constitution, so far as it respects the judicial authority, can only be carried into effect by acts of the legislature appointing courts and prescribing their methods of proceeding. 2nd. That Congress has provided no new law in regard to this case, but expressly referred us to the old. 3rd. That there are no principles of the old law, to which, we must have recourse that in any manner authorise the present suit, either by precedent or by analogy. The consequence of which, in my opinion, clearly is that the suit in question cannot be maintained, nor, of course, the motion made upon it be complied with.

From the manner in which I have viewed this subject, so different from that in which it has been contemplated by the Attorney General, it is evident that I have not had occasion to notice many arguments offered by the Attorney General which certainly were very proper, as to his extended view of the case, but do not affect mine. No part of the Law of Nations can apply to this case, as I apprehend, but that part which is termed "The Conventional Law of Nations;" nor can this any otherwise apply than as furnishing rules of interpretation, since unquestionably the people of the United States had a right to form what kind of Union, and upon what terms they pleased, without reference to any former examples. If, upon a fair construction of the Constitution of the United States, the power contended for really exists, it undoubtedly may be exercised, though it be a power of the first impression. If it does not exist, upon that authority, ten thousand examples of similar powers would not warrant its assumption. So far as this great question affects the Constitution itself, if the present afforded, consistently with the particular grounds of my opinion, a proper occasion for a decision upon it, I would not shrink from its discussion. But it is of extreme moment that no judge should rashly commit himself upon important questions which it is unnecessary for him to decide. My opinion being that, even if the Constitution would admit of the exercise of such a power, a new law is necessary for the purpose, since no part of the existing law applies, this alone is sufficient to justify my determination in the present case. So much, however, has been said on the Constitution that it may not be improper to intimate that my present opinion is strongly against any construction of it which will admit, under any circumstances, a compulsive suit against a State for the recovery of money. I

think every word in the Constitution may have its full effect without involving this consequence, and that nothing but express words, or an insurmountable implication (neither of which I consider, can be found in this case) would authorise the deduction of so high a power. This opinion I hold, however, with all the reserve proper for one which, according to my sentiments in this case, may be deemed in some measure extrajudicial. With regard to the policy of maintaining such suits,

that is not for this Court to consider, unless the point in all other respects was very doubtful. Policy might then be argued from with a view to preponderate the judgment. Upon the question before us, I have no doubt. I have therefore nothing to do with the policy. But I confess, if I was at liberty to speak on that subject, my opinion on the policy of the case would also differ from that of the Attorney General. It is, however, a delicate topic. I pray to God that, if the Attorney General's doctrine as to the law be established by the judgment of this Court, all the good he predicts from it may take place, and none of the evils with which, I have the concern to say, it appears to me to be pregnant.

Blair, Justice.

In considering this important case, I have thought it best to pass over all the strictures which have been made on the various European confederations, because, as, on the one hand, their likeness to our own is not sufficiently close to justify any analogical application, so, on the other, they are utterly destitute of any binding authority here. The Constitution of the United States is the only fountain from which I shall draw; the only authority to which I shall appeal. Whatever be the true language of that, it is obligatory upon every member of the Union, for no State could have become a member but by an adoption of it by the people of that State. What then do we find there requiring the submission of individual States to the judicial authority of the United States? This is expressly extended, among other things, to controversies between a State and citizens of another State. Is, then, the case before us one of that description? Undoubtedly it is, unless it may be a sufficient denial to say that it is a controversy between a citizen of one State and another State. Can this change of order be an essential change in the thing intended? And is this alone a sufficient ground from which to conclude that the jurisdiction of this Court reaches the case where a State is plaintiff, but not where it is defendant? In this latter case, should any man be asked whether it was not a controversy between a State and citizen of another State, must not the answer be in the affirmative? A dispute between A. and B. as surely a dispute between B. and A. Both cases, I have no doubt, were intended; and probably the State was first named,

in respect to the dignity of a State. But that very dignity seems to have been thought a sufficient reason for confining the sense to the case where a State is plaintiff. It is, however, a sufficient answer to say that our Constitution most certainly contemplates, in another branch of the cases enumerated, the maintaining a jurisdiction against a State, as defendant; this is unequivocally asserted when the judicial power of the United States is extended to controversies between two or more States; for there, a State must, of necessity, be a defendant. It is extended also to controversies between a State and foreign states; and if the argument taken from the order of designation were good, it would be meant here that this Court might have cognizance of a suit where a State is plaintiff, and some foreign state a defendant, but not where a foreign state brings a suit against a State. This, however, not to mention that the instances may rarely occur when a State may have an opportunity of suing in the American Courts a foreign state, seems to lose sight of the policy which, no doubt, suggested this provision, *viz.,* that no State in the Union should, by withholding justice, have it in its power to embroil the whole Confederacy in disputes of another nature. But if a foreign state, though last named, may, nevertheless, be a plaintiff against an individual State, how can it be said that a controversy between a State and a citizen of another State means, from the mere force of the order of the words, only such cases where a State is plaintiff? After describing, generally, the judicial powers of the United States, the Constitution goes on to speak of it distributively, and gives to the Supreme Court original jurisdiction, among other instances, in the case where a State shall be a party; but is not a State a party as well

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in the condition of a defendant as in that of a plaintiff? And is the whole force of that expression satisfied by confining its meaning to the case of a plaintiff State? It seems to me that if this Court should refuse to hold jurisdiction of a case where a State is defendant, it would renounce part of the authority conferred, and, consequently, part of the duty imposed on it by the Constitution, because it would be a refusal to take cognizance of a case where a State is a party. Nor does the

jurisdiction of this Court, in relation to a State, seem to me to be questionable on the ground that Congress has not provided any form of execution, or pointed out any mode of making the judgment against a State effectual; the argument *ab in utili* may weigh much in cases depending upon the construction of doubtful legislative acts, but can have no force, I think, against the clear and positive directions of an act of Congress and of the Constitution. Let us go on as far as we can; and if, at the end of the business, notwithstanding the powers given us in the 14th section

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of the Judicial Law, we meet difficulties insurmountable to us, we must leave it to those departments of Government which have higher powers, to which, however, there may be no necessity to have recourse: is it altogether a vain expectation that a State may have other motives than such as arise from the apprehension of coercion, to carry into execution a judgment of the Supreme Court of the United States, though not conformable to their own ideas of justice? Besides, this argument takes it for granted that the judgment of the Court will be against the State; it possibly may be in favor of the State; and the difficulty vanishes. Should judgment be given against the plaintiff, could it be said to be void because extrajudicial? If the plaintiff, grounding himself upon that notion, should renew his suit against the State in any mode in which she may permit herself to be sued in her own Courts, would the Attorney General for the State be obliged to go again into the merits of the case because the matter, when here, was *coram non judice?* Might he not rely upon the judgment given by this Court in bar of the new suit? To me, it seems clear that he might. And if a State may be brought before this Court as a defendant, I see no reason for confining the plaintiff to proceed by way of petition; indeed, there would even seem to be an impropriety in proceeding in that mode. When sovereigns are sued in their own Courts, such a method may have been established as the most respectful form of demand; but we are not now in a State court, and if sovereignty be an exemption from suit in any other than the sovereign's own courts, it follows that when a State, by adopting the Constitution, has agreed to be amenable to the judicial power of the United States, she has, in

that respect, given up her right of sovereignty.

With respect to the service of the summons to appear, the manner in which it has been served seems to be as proper as any which could be devised for the purpose of giving notice of the suit, which is the end proposed by it, the Governor being the head of the Executive Department and the Attorney General the law officer who generally represents the State in legal proceedings. And this mode is the less liable to exception when it is considered that, in the suit brought in this Court by the State of Georgia against Brailsford * and others, it is conceived in the name of the Governor in behalf of the State. If the opinion which I have delivered respecting the liability of a State to be sued in this Court should be the opinion of the Court, it will come in course to consider what is the proper step to be taken for inducing appearance, none having been yet entered in behalf of the defendant. A judgment by default, in the present stage of the business, and writ of enquiry of damages, would

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be too precipitate in any case, and too incompatible with the dignity of a State in this. Farther opportunity of appearing to defend the suit ought to be given. The conditional order moved for the last term, the consideration of which was deferred to this, seems to me to be a very proper mode; it will warn the State of the meditated consequence of a refusal to appear, and give an opportunity for more deliberate consideration. The order, I think, should be thus:

"Ordered that unless the State of Georgia should, after due notice of this order, by a service thereof upon the Governor and Attorney General of the said State, cause an appearance to be entered in behalf of the State, on the 5th day of the next Term, or then shew cause to the contrary, judgment be then entered up against the State, and a writ of enquiry of damages be awarded."

* Som, Sup. c. 3.

Wilson, Justice.

This is a case of uncommon magnitude. One of the parties to it is a State -- certainly respectable, claiming to be sovereign. The question to be determined is whether this State, so respectable, and whose claim soars so high, is amenable to the jurisdiction of the Supreme Court of the United States? This question, important in itself, will depend on others more important still, and, may, perhaps, be ultimately resolved into one no less radical than this: "do the people of the United States form a Nation?"

A cause so conspicuous and interesting should be carefully and accurately viewed from every possible point of sight. I shall examine it 1st. By the principles of general jurisprudence. 2nd. By the laws and practice of particular States and Kingdoms. From the law of nations, little or no illustration of this subject can be expected. By that law, the several States and Governments spread over our globe are considered as forming a society, not a NATION. It has only been by a very few comprehensive minds, such as those of Elizabeth and the Fourth Henry, that this last great idea has been even contemplated. 3rdly. and chiefly, I shall examine the important question before us by the Constitution of the United States, and the legitimate result of that valuable instrument.

1. I am, first, to examine this question by the principles of general jurisprudence. What I shall say upon this head I introduce by the observation of an original and profound writer who, in the philosophy of mind and all the sciences attendant on this prime one, has formed an era not less remarkable, and far more illustrious, than that formed by the justly celebrated Bacon in another science, not prosecuted with less ability, but less dignified as to its object; I mean the philosophy of matter. Dr. Reid, in his excellent enquiry into the human mind, on the principles of common sense, speaking of the sceptical and illiberal

philosophy, which under bold but false pretentions to liberality, prevailed in many parts of Europe before he wrote, makes the following judicious remark:

"The language of philosophers with regard to the original faculties of the mind is so adapted to the prevailing system that it cannot fit any other; like a coat that fits the man for whom it was made, and shews him to advantage, which yet will fit very aukward upon one of a different make, although as handsome and well proportioned. It is hardly possible to make any innovation in our philosophy concerning the mind and its operations without using new words and phrases, or giving a different meaning to those that are received."

With equal propriety may this solid remark be applied to the great subject on the principles of which the decision of this Court is to be founded. The perverted use of genus and species in logic, and of impressions and ideas in metaphysics, have never done mischief so extensive or so practically pernicious as has been done by States and sovereigns in politics and jurisprudence -- in the politics and jurisprudence even of those who wished and meant to be free. In the place of those expressions, I intend not to substitute new ones; but the expressions themselves I shall certainly use for purposes different from those for which hitherto they have been frequently used; and one of them I shall apply to an object still more different from that to which it has hitherto been more frequently -- I may say almost universally -- applied. In these purposes, and in this application, I shall be justified by example the most splendid, and by authority the most binding; the example of the most refined as well as the most free nation known to antiquity; and the authority of one of the best Constitutions known to modern times. With regard to one of the terms, "state," this authority is declared; with regard to the other, "sovereign," the authority is implied only. But it is equally strong. For, in an instrument well drawn, as in a poem well composed, mence is sometimes most expressive.

To the Constitution of the United States, the term SOVEREIGN, is totally unknown. There is but one place where it could have been used with propriety. But even in that place, it would not, perhaps, have comported with the delicacy of those who ordained and established that Constitution. They might have announced themselves "SOVEREIGN" people of the United States. But serenely conscious of the fact, they avoided the ostentatious declaration.

Having thus avowed my disapprobation of the purposes for which the terms, state and sovereign are frequently used, and of the object to which the application of the last of them is almost universally made, it is now proper that I should disclose the meaning which I assign to both, and the application,

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which I make of the latter. In doing this, I shall have occasion incidently to evince how true it is that states and governments were made for man, and, at the same time, how true it is that his creatures and servants have first deceived, next vilified, and, at last, oppressed their master and maker.

Man, fearfully and wonderfully made, is the workmanship of his all perfect Creator. A state, useful and valuable as the contrivance is, is the inferior contrivance of man, and from his native dignity derives all its acquired importance. When I speak of a state as an inferior contrivance, I mean that it is a contrivance inferior only to that which is divine. Of all human contrivances, it is certainly most transcendantly excellent. It is concerning this contrivance that

Cicero says so sublimely,

"Nothing, which is exhibited upon our globe is more acceptable to that divinity which governs the whole universe than those communities and assemblages of men which, lawfully associated, are denominated states. [Footnote 1]"

Let a state be considered as subordinate to the people. But let everything else be subordinate to the state. The latter part of this position is equally necessary with the former. For in the practice, and even at length, in the science of politics, there has very frequently been a strong current against the natural order of things, and an inconsiderate or an interested disposition to sacrifice the end to the means. As the state has claimed precedence of the people, so, in the same inverted course of things, the government has often claimed precedence of the state, and to this perversion in the second degree, many of the volumes of confusion concerning sovereignty owe their existence. The ministers, dignified very properly by the appellation of the magistrates, have wished, and have succeeded in their wish, to

be considered as the sovereigns of the state. This second degree of perversion is confined to the old world, and begins to diminish even there; but the first degree is still too prevalent, even in the several States of which our union is composed. By a "state," I mean a complete body of free persons united together for their common benefit to enjoy peaceably what is their own and to do justice to others. It is an artificial person. It has its affairs and its interests; it has its rules; it has its rights; and it has its obligations. It may acquire property distinct from that of its members. It may incur debts to be discharged out of the public stock, not out of the private fortunes of individuals. It may be bound by contracts, and for damages arising from the breach of those contracts. In all our contemplations, however, concerning this

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feigned and artificial person, we should never forget that, in truth and nature, those who think and speak and act are men.

Is the foregoing description of a state a true description? It will not be questioned but it is. Is there any part of this description, which intimates in the remotest manner that a state, any more than the men who compose it, ought not to do justice and fulfil engagements? It will not be pretended that there is. If justice is not done; if engagements are not fulfilled, is it, upon general principles of right, less proper in the case of a great number than in the case of an individual to secure by compulsion that which will not be voluntarily performed? Less proper it surely cannot be. The only reason, I believe, why a free man is bound by human laws is that he binds himself. Upon the same principles upon which he becomes bound by the laws, he becomes amenable to the courts of justice which are formed and authorised by those laws. If one free man, an original sovereign, may do all this, why may not an aggregate of free men, a collection of original sovereigns, do this likewise? If the dignity of each singly is undiminished, the dignity of all jointly must be unimpaired. A state, like a merchant, makes a contract. A dishonest state, like a dishonest merchant, wilfully refuses to discharge it. The latter is amenable to a court of justice. Upon general principles of right, shall the former, when summoned to answer the fair demands of its creditor, be permitted, Proteus-like, to assume a

new appearance, and to insult him and justice by declaring "I am a Sovereign state?" Surely not. Before a claim so contrary, in its first appearance to the general principles of right and equality be sustained by a just and impartial tribunal, the person, natural or artificial, entitled to make such claim should certainly be well known and authenticated. Who, or what, is a sovereignty? What is his or its sovereignty? On this subject, the errors and the mazes are endless and inexplicable. To enumerate all therefore will not be expected. To take notice of some will be necessary to the full illustration of the present important cause.

In one sense, the term "sovereign" has for its correlative "subject." In this sense, the term can receive no application, for it has no object in the Constitution of the United states. Under that Constitution, there are citizens, but no subjects. "Citizen of the United states." [Footnote 2] "Citizens of another state." "Citizens of different states." "A state or citizen thereof." [Footnote 3] The term, subject,occurs, indeed, once in the instrument; but to mark the contrast strongly, the epithet "foreign" [Footnote 4] is prefixed. In this sense, I presume the state of Georgia has no claim upon

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her own citizens. In this sense, I am certain, she can have no claim upon the citizens of another state.

In another sense, according to some writers, [Footnote 5] every state, which governs itself without any dependence on another power is a sovereign state. Whether, with regard to her own citizens, this is the case of the state of Georgia; whether those citizens have done, as the individuals of England are said by their late instructors to have done, surrendered the supreme power to the state or government, and reserved nothing to themselves; or whether, like the people of other states, and of the United states, the citizens of Georgia have reserved the supreme power in their own hands, and on that supreme power have made the state dependent, instead of being sovereign -- these are questions to which, as a judge in this cause, I can neither know nor suggest the proper answers, though, as a citizen of the Union, I know, and am interested to know that the most satisfactory

answers can be given. As a citizen, I know the government of that state to be republican; and my short definition of such a government is one constructed on this principle -- that the supreme power resides in the body of the people. As a judge of this court, I know, and can decide upon the knowledge that the citizens of Georgia, when they acted upon the large scale of the Union, as a part of the "People of the United states," did not surrender the supreme or sovereign power to that state, but, as to the purposes of the Union, retained it to themselves. As to the purposes of the Union, therefore, Georgia is NOT a sovereign state. If the judicial decision of this case forms one of those purposes, the allegation that Georgia is a sovereign state is unsupported by the fact. Whether the judicial decision of this cause is or is not one of those purposes is a question which will be examined particularly in a subsequent part of my argument.

There is a third sense, in which the term "sovereign" is frequently used, and which it is very material to trace and explain, as it furnishes a basis for what I presume to be one of the principal objections against the jurisdiction of this court over the State of Georgia. In this sense, sovereignty is derived from a feudal source, and, like many other parts of that system so degrading to man, still retains its influence over our sentiments and conduct, though the cause by which that influence was produced never extended to the American states. The accurate and well informed President Henault, in his excellent chronological abridgment of the History of France, tells us that, about the end of the second race of Kings, a new kind of possession was acquired, under the name of Fief. The governors of cities and provinces usurped equally the property of land,

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and the administration of justice; and established themselves as proprietary seigniors over those places, in which they had been only civil magistrates or military officers. By this means, there was introduced into the state a new kind of authority, to which was assigned the appellation of sovereignty. In process of time, the feudal system was extended over France and almost all the other nations of Europe. And every kingdom became, in fact, a large fief. Into England this system was introduced by the conqueror, and to this era we may, probably, refer the

English maxim that the King or sovereign is the fountain of justice. But, in the case of the King, the sovereignty had a double operation. While it vested him with jurisdiction over others, it excluded all others from jurisdiction over him. With regard to him, there was no superior power, and consequently, on feudal principles, no right of jurisdiction.

"The law, says Sir William Blackstone, [Footnote 6] ascribes to the King the attribute of sovereignty; he is sovereign and independent within his own dominions, and owes no kind of objection to any other potentate upon earth. Hence it is that no suit or action can be brought against the King, even in civil matters, because no court can have jurisdiction over him, for all jurisdiction implies superiority of power."

This last position is only a branch of a much more extensive principle, on which a plan of systematic despotism has been lately formed in England, and prosecuted with unwearied assiduity and care. Of this plan, the author of the Commentaries was, if not the introducer, at least the great supporter. He has been followed in it by writers later and less known, and his doctrines have, both on the other and this side of the Atlantic, been implicitly and generally received by those who neither examined their principles nor their consequences. The principle is that all human law must be prescribed by a superior. This principle I mean not now to examine. Suffice it at present to say that another principle, very different in its nature and operations, forms, in my judgment, the basis of sound and genuine jurisprudence; laws derived from the pure source of equality and justice must be founded on the CONSENT of those whose obedience they require. The sovereign, when traced to his source, must be found in the man.

I have now fixed, in the scale of things, the grade of a state; and have described its composure. I have considered the nature of sovereignty, and pointed its application to the proper object. I have examined the question before us by the principles of general jurisprudence. In those principles, I find nothing which tends to evince an exemption of the state of Georgia from the jurisdiction of the court. I find everything to have a contrary tendency.

II. I am, in the second place, to examine this question by the laws and practice of different states and Kingdoms. In ancient Greece, as we learn from Isocrates, whole nations defended their rights before crowded tribunals. Such occasions as these excited, we are told, all the powers of persuasion, and the vehemence and enthusiasm of the sentiment was gradually infused into the Grecian language, equally susceptible of strength and harmony. In those days, law, liberty, and refining science made their benign progress in strict and graceful union. The rude and degrading league between the bar and feudal barbarism was not yet formed.

When the laws and practice of particular states have any application to the question before us, that application will furnish what is called an argument *a fortiori,* because all the instances produced will be instances of subjects instituting and supporting suits against those who were deemed their own sovereigns. These instances are stronger than the present one, because between the present plaintiff and defendant no such unequal relation is alleged to exist.

Columbus achieved the discovery of that country which, perhaps ought to bear his name. A contract made by Columbus furnished the first precedent for supporting, in his discovered country, the cause of injured merit against the claims and pretentions of haughty and ungrateful power. His son Don Diego wasted two years in incessant but fruitless solicitation at the Court of Spain for the rights which descended to him in consequence of his father's original capitulation. He endeavoured, at length, to obtain by a legal sentence what he could not procure from the favour of an interested monarch. He commenced a suit against Ferdinand before the council which managed Indian affairs, and that court, with integrity which reflects honour on their proceedings, decided against the King, and sustained Don Diego's claim. [Footnote 7]

Other states have instituted officers to judge the proceedings of their Kings. Of this kind were the Ephori of Sparta; of this kind also was the mayor of the Palace, and afterwards the constable of France. [Footnote 8]

But of all the laws and institutions relating to the present question, none is so striking as that described by the famous Hottoman, in his book entitled Francogallia. When the Spaniards of Arragon elect a King, they represent a kind of play, and introduce a personage whom they dignify by the name of LAW, *la Jusliza,* of Arragon. This personage they declare by a public decree to be greater and more powerful than their King, and then address him in the following remarkable expressions.

"We, who are of as great worth as you, and can do more

than you can do, elect you to be our King upon the conditions stipulated. But between you and us, there is one of greater authority than you. [Footnote 9]"

In England, according to Sir William Blackstone, no suit can be brought against the King, even in civil matters. So, in that Kingdom, is the law, at this time, received. But it was not always so. Under the Saxon government, a very different doctrine was held to be orthodox. Under that government, as we are informed by the Mirror of Justice, a book said by Sir Edward Coke to have been written in part, at least, before the conquest; under that government, it was ordained that the King's court should be open to all plaintiffs, by which, without delay, they should have remedial writs, as well against the King or against the Queen as against any other of the people. [Footnote 10] The law continued to be the same for some centuries after the conquest. Until the time of Edward I, the King might have been sued as a common person. The form of the process was even imperative. " *Pracipe Henrico Regi Anglia,* " etc. "Command Henry King of England" etc. [Footnote 11] Bracton, who wrote in the time of Henry III, uses these very remarkable expressions concerning the King " *in justitia recipienda, minimo de regno suo comparetur* " -- "in receiving justice, he should be placed on a level with the meanest person in the Kingdom." [Footnote 12] True it is that now, in England, the King must be sued in his courts by petition, but even now, the difference is only in the form, not in the thing. The judgments or decrees of those courts will substantially be the same upon a precatory as upon a mandatory process. In the

courts of justice, says the very able author of the considerations on the laws of forfeiture, the King enjoys many privileges, yet not to deter the subject from contending with him freely. [Footnote 13] The judge of the High court of Admiralty in England made, in a very late cause, the following manly and independent declaration.

"In any case, where the Crown is a party, it is to be observed that the Crown can no more withhold evidence of documents in its possession, than a private person. If the court thinks proper to order the production of any public instrument, that order must be obeyed. It wants no Insignia of an authority derived from the Crown. [Footnote 14]"

"Judges ought to know that the poorest peasant is a man as well as the King himself; all men ought to obtain justice, since, in the estimation of justice, all men are equal, whether the Prince complain of a peasant, or a peasant complain of the Prince. [Footnote 15]"

These are the words of a King, of the late Frederic of Prussia. In his courts of justice, that great man stood

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his native greatness, and disdained to mount upon the artificial stilts of sovereignty.

Thus much concerning the laws and practice of other states and Kingdoms. We see nothing against, but much in favour of, the jurisdiction of this court over the State of Georgia, a party to this cause.

III. I am, thirdly, and chiefly, to examine the important question now before us by the Constitution of the United states, and the legitimate result of that valuable instrument. Under this view, the question is naturally subdivided into two others. 1. Could the Constitution of the United states vest a jurisdiction over the State of Georgia? 2. Has that Constitution vested such jurisdiction in this Court? I have already remarked that, in the practice, and even in the science, of politics, there

has been frequently a strong current against the natural order of things, and an inconsiderate or an interested disposition to sacrifice the end to the means. This remark deserves a more particular illustration. Even in almost every nation which has been denominated free, the state has assumed a supercilious preeminence above the people who have formed it. Hence the haughty notions of state independence, state sovereignty and state supremacy. In despotic governments, the government has usurped, in a similar manner, both upon the state and the people. Hence all arbitrary doctrines and pretensions concerning the supreme, absolute, and incontrolable, power of government. In each, man is degraded from the prime rank which he ought to hold in human affairs. In the latter, the state as well as the man is degraded. Of both degradations, striking instances occur in history, in politics, and in common life. One of them is drawn from an anecdote which is recorded concerning Louis XIV, who has been stiled the grand Monarch of France. This Prince, who diffused around him so much dazzling splendour and so little vivifying heat, was vitiated by that inverted manner of teaching and of thinking, which forms Kings to be tyrants, without knowing or even suspecting that they are so. The oppression under which he held his subjects during the whole course of his long reign proceeded chiefly from the principles and habits of his erroneous education. By these, he had been accustomed to consider his kingdom as his patrimony, and his power over his subjects as his rightful and undelegated inheritance. These sentiments were so deeply and strongly imprinted on his mind that when one of his Ministers represented to him the miserable condition to which those subjects were reduced, and, in the course of his representation, frequently used the word L'Etat, the state, the King, though he felt the truth and approved the substance of all that was said, yet was shocked at the frequent repetition of the expression L'Etat, and

complained of it is as an indecency offered to his person and character. And, indeed that Kings should

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imagine themselves the final causes for which men were made and societies were formed and governments were instituted will cease to be a matter of wonder or surprise when we find that lawyers, and statesmen, and philosophers have taught or favoured principles, which necessarily lead to the same conclusion. Another instance, equally strong, but still more astonishing, is drawn from the British government, as described by Sir William Blackstone and his followers. As described by him and them, the British is a despotic government. It is a government without a people. In that government, as so described, the sovereignty is possessed by the Parliament. In the Parliament, therefore, the supreme and absolute authority is vested. [Footnote 16] In the Parliament resides that incontrolable and despotic power which, in all governments, must reside somewhere. The constituent parts of the Parliament are the King's Majesty, the Lord's Spiritual, the Lord's Temporal, and the Commons. The King and these three Estates together form the great corporation or body politic of the Kingdom. All these sentiments are found; the last expressions are found verbatim [Footnote 17] in the commentaries upon the laws of England. [Footnote 18] The Parliament form the great body politic of England! What, then, or where, are the People? Nothing! Nowhere! They are not so much as even the "baseless fabric of a vision!" From legal contemplation they totally disappear! Am I not warranted in saying that, if this is a just description, a government, so and justly so described, is a despotic government? Whether this description is or is not a just one is question of very different import.

In the United states, and in the several states, which compose the Union, we go not so far, but still we go one step farther than we ought to go in this unnatural and inverted order of things. The states, rather than the people, for whose sakes the states exist, are frequently the objects which attract and arrest our principal attention. This, I believe, has produced much of the confusion and perplexity which have appeared in several proceedings and several publications on state politics, and on the politics, too, of the United states. Sentiments and expressions of this inaccurate kind prevail in our common, even in our convivial, language. Is a toast asked? "The United states," instead of the "People of the United states," is the toast given. This is not politically correct. The toast is meant to present to view the

first great object in the Union: it presents only the second. It presents only the artificial person, instead of the natural persons who spoke it into existence. A state I cheerfully fully

admit, is the noblest work of Man. But, Man himself, free and honest, is, I speak as to this world, the noblest work of God.

Concerning the prerogative of Kings, and concerning the sovereignty of states, much has been said and written; but little has been said and written concerning a subject much more dignified and important, the majesty of the people. The mode of expression, which I would substitute in the place of that generally used, is not only politically, but also (for between true liberty and true taste there is a close alliance) classically more correct. On the mention of Athens, a thousand refined and endearing associations rush at once into the memory of the scholar, the philosopher, and the patriot. When Homer, one of the most correct, as well as the oldest of human authorities, enumerates the other nations of Greece whose forces acted at the siege of Troy, he arranges them under the names of their different Kings or Princes. But when he comes to the Athenians, he distinguishes them by the peculiar appellation of the PEOPLE [Footnote 19] of Athens. The well known address used by Demosthenes, when he harrangued and animated his assembled countrymen, was "O Men of Athens." With the strictest propriety, therefore, classical and political, our national scene opens with the most magnificent object which the nation could present. "The PEOPLE of the United states" are the first personages introduced. Who were those people? They were the citizens of thirteen states, each of which had a separate constitution and government, and all of which were connected together by Articles of Confederation. To the purposes of public strength and felicity, that Confederacy was totally inadequate. A requisition on the several states terminated its legislative authority. Executive or judicial authority it had none. In order therefore to form a more perfect union, to establish justice, to ensure domestic tranquillity, to provide for common defence, and to secure the blessings of liberty, those people, among whom were the people of Georgia, ordained and established the present Constitution. By that Constitution

legislative power is vested, executive power is vested, judicial power is vested.

The question now opens fairly to our view, could the people of those states, among whom were those of Georgia, bind those states, and Georgia among the others, by the legislative, executive, and judicial power so vested? If the principles on which I have founded myself are just and true, this question must unavoidably receive an affirmative answer. If those states were the work of those people, those people, and that I may apply the case closely, the people of Georgia, in particular,

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could alter as they pleased their former work. To any given degree, they could diminish as well as enlarge it. Any or all of the former state powers, they could extinguish or transfer. The inference which necessarily results is that the Constitution ordained and established by those people, and, still closely to apply the case, in particular by the people of Georgia, could vest jurisdiction or judicial power over those states and over the State of Georgia in particular.

The next question under this head, is has the Constitution done so? Did those people mean to exercise this, their undoubted power? These questions may be resolved either by fair and conclusive deductions or by direct and explicit declarations. In order ultimately to discover whether the people of the United states intended to bind those states by the judicial power vested by the national Constitution, a previous enquiry will naturally be: did those people intend to bind those states by the legislative power vested by that Constitution? The Articles of Confederation, it is well known, did not operate upon individual citizens, but operated only upon states. This defect was remedied by the national Constitution, which, as all allow, has an operation on individual citizens. But if an opinion which some seem to entertain be just, the defect remedied on one side was balanced by a defect introduced on the other. For they seem to think that the present Constitution operates only on individual citizens, and not on states. This opinion, however, appears to be altogether unfounded. When certain laws of the states are declared to be "subject to the revision and controul of the Congress," [Footnote 20] it cannot, surely, be contended that the legislative power of the national

government was meant to have no operation on the several states. The fact, uncontrovertibly established in one instance, proves the principle in all other instances to which the facts will be found to apply. We may then infer that the people of the United states intended to bind the several states by the legislative power of the national government.

In order to make the discovery at which we ultimately aim, a second previous enquiry will naturally be: did the people of the United states intend to bind the several states by the executive power of the national government? The affirmative answer to the former question directs, unavoidably, an affirmative answer to this. Ever since the time of Bracton, his maxim, I believe, has been deemed a good one: " *supervacuum esset leges condere, nisi esset qui leges tueretur.* " [Footnote 21] "It would be superfluous to make laws unless those laws, when made, were to be enforced." When the laws are plain, and the application of them is uncontroverted, they are enforced immediately by the

executive authority of government. When the application of them is doubtful or intricate, the interposition of the judicial authority becomes necessary. The same principle therefore which directed us from the first to the second step will direct us from the second to the third and last step of our deduction. Fair and conclusive deduction, then, evinces that the people of the United states did vest this court with jurisdiction over the State of Georgia. The same truth may be deduced from the declared objects and the general texture of the Constitution of the United states. One of its declared objects is to form an Union more perfect than, before that time, had been formed. Before that time, the Union possessed legislative, but uninforced legislative power over the states. Nothing could be more natural than to intend that this legislative power should be enforced by powers executive and judicial. Another declared object is, "to establish justice." This points, in a particular manner, to the judicial authority. And when we view this object in conjunction with the declaration, "that no state shall pass a law impairing the obligation of contracts," we shall probably think that this object points, in a particular manner, to the jurisdiction of the court over the several states. What good purpose could this

constitutional provision secure if a state might pass a law impairing the obligation of its own contracts, and be amenable, for such a violation of right to no controuling judiciary power? We have seen that on the principles of general jurisprudence, a state, for the breach of a contract, may be liable for damages. A third declared object is "to ensure domestic tranquillity." This tranquillity is most likely to be disturbed by controversies between states. These consequences will be most peaceably and effectually decided by the establishment and by the exercise of a superintending judicial authority. By such exercise and establishment, the law of nations, the rule between contending states, will be enforced among the several states in the same manner as municipal law.

Whoever considers, in a combined and comprehensive view, the general texture of the Constitution will be satisfied that the people of the United states intended to form themselves into a nation for national purposes. They instituted for such purposes a national government, complete in all its parts, with powers legislative, executive and judicial, and in all those powers extending over the whole nation. Is it congruous that, with regard to such purposes, any man or body of men, any person natural or artificial, should be permitted to claim successfully an entire exemption from the jurisdiction of the national government? Would not such claims, crowned with success, be repugnant to our very existence as a nation? When

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so many trains of deduction, coming from different quarters, converge and unite at last in the same point, we may safely conclude, as the legitimate result of this Constitution, that the State of Georgia is amenable to the jurisdiction of this court.

But, in my opinion, this doctrine rests not upon the legitimate result of fair and conclusive deduction from the Constitution. It is confirmed beyond all doubt by the direct and explicit declaration of the Constitution itself. "The judicial power of the United states shall extend, to controversies between two states." [Footnote 22] Two states are supposed to have a controversy between them. This controversy is supposed to be brought before those vested with the judicial power of the United

states. Can the most consummate degree of professional ingenuity devise a mode by which this "controversy between two states" can be brought before a court of law, and yet neither of those states be a defendant? "The judicial power of the United states shall extend to controversies between a state and citizens of another state." Could the strictest legal language, could even that language which is peculiarly appropriated to an art deemed by a great master to be one of the most honorable, laudable, and profitable things in our law; could this strict and appropriated language describe with more precise accuracy the cause now depending before the tribunal? Causes, and not parties to causes, are weighed by justice in her equal scales. On the former solely her attention is fixed. To the latter she is, as she is painted, blind.

I have now tried this question by all the touchstones to which I proposed to apply it. I have examined it by the principles of general jurisprudence; by the laws and practice of states and Kingdoms; and by the Constitution of the United states. From all, the combined inference is that the action lies.

[Footnote 1]

Art. 1. &. 2.

[Footnote 2]

Art. 3. s. 3.

[Footnote 3]

Art. 3. s. 3.

[Footnote 4]

Vatt. B. 1. c. s. 4.

[Footnote 5]

113.

[Footnote 6]

1 Com. 241, 242.

[Footnote 7]

Sid. 131.

[Footnote 8]

Hol. 71. Book 31.

[Footnote 9]

Hol. 71. Book 31.

[Footnote 10]

4 C.A.N. 487.

[Footnote 11]

Com. 104.

[Footnote 12]

Brac. 107. Com. 104.

[Footnote 13]

G.F. 124.

[Footnote 14]

Col.Jur. 68.

[Footnote 15]

War, 343.

[Footnote 16]

46-52. 147. 160-162.

[Footnote 17]

155.

[Footnote 18]

153.

[Footnote 19]

Iliad, I., 2. v. 54.

[Footnote 20]

1. s. 10.

[Footnote 21]

Brac. 107.

[Footnote 22]

Art. 3. s. 2.

Cushing, justice.

The grand and principal question in this case is whether a State can, by the Federal Constitution, be sued by an individual citizen of another State?

The point turns not upon the law or practice of England, although perhaps it may be in some measure elucidated thereby, nor upon the law of any other country whatever, but upon the Constitution established by the people of the United States, and particularly upon the extent of powers given to the Federal judicial in the second section of the third article of the Constitution. It is declared that

"the judicial power shall extend to all cases in law and equity arising under the Constitution, the laws of the United States, or treaties made or which shall be made under their authority; to all cases affecting ambassadors or other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies, to which the United

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States shall be a party; to controversies between two or more States and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State and citizens thereof and foreign states, citizens or subjects."

The judicial power, then, is expressly extended to "controversies between a State and citizens of another State." When a citizen makes a demand against a State of which he is not a citizen, it is as really a controversy between a State and a citizen of another State as if such State made a demand against such citizen. The case, then, seems clearly to fall within the letter of the Constitution. It may be suggested that it could not be intended to subject a State to be a defendant, because it would effect the sovereignty of States. If that be the case, what shall we do with the immediate preceding clause; "controversies between two or more States," where a State must of necessity be defendant? If it was not the intent, in the very next clause also, that a State might be made defendant, why was it so expressed as naturally to lead to and comprehend that idea? Why was not an exception made, if one was intended?

Again, what are we to do with the last clause of the section of judicial powers, *viz.,* "Controversies between a State, or the citizens thereof, and foreign states or citizens?" Here again, States must be suable or liable to be made defendants by this clause, which has a similar mode of language with the two other clauses I have remarked upon. For if the judicial power extends to a controversy between one of the United States and a foreign state, as the clause expresses, one of them must be defendant. And then, what becomes of the sovereignty of States as far as suing affects it? But although the words appear reciprocally to affect the State here

and a foreign state, and put them on the same footing as far as may be, yet ingenuity may say that the State here may sue, but cannot be sued; but that the foreign state may be sued, but cannot sue. We may touch foreign sovereignties, but not our own. But I conceive the reason of the thing, as well as the words of the Constitution, tend to show that the Federal judicial power extends to a suit brought by a foreign state against any one of the United States. One design of the general government was for managing the great affairs of peace and war and the general defence, which were impossible to be conducted, with safety, by the States separately. Incident to these powers, and for preventing controversies between foreign powers or citizens from rising to extremities and to an appeal to the sword, a national tribunal was necessary amicably to decide them, and thus ward off such fatal public calamity. Thus, States at home and their citizens, and foreign states and their citizens, are put together without

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distinction upon the same footing, as far as may be, as to controversies between them. So also, with respect to controversies between a State and citizens of another State (at home) comparing all the clauses together, the remedy is reciprocal, the claim to justice equal. As controversies between State and State, and between a State and citizens of another State, might tend gradually to involve States in war and bloodshed, a disinterested civil tribunal was intended to be instituted to decide such controversies and preserve peace and friendship. Further, if a State is entitled to justice in the Federal court against a citizen of another State, why not such citizen against the State, when the same language equally comprehends both? The rights of individuals and the justice due to them are as dear and precious as those of States. Indeed, the latter are founded upon the former, and the great end and object of them must be to secure and support the rights of individuals, or else vain is government.

But still it may be insisted that this will reduce States to mere corporations, and take away all sovereignty. As to corporations, all States whatever are corporations or bodies politic. The only question is, what are their powers? As to individual States and the United States, the Constitution marks the boundary of powers.

Whatever power is deposited with the Union by the people for their own necessary security is so far a curtailing of the power and prerogatives of States. This is, as it were, a self-evident proposition; at least it cannot be contested. Thus the power of declaring war, making peace, raising and supporting armies for public defence, levying duties, excises and taxes, if necessary, with many other powers, are lodged in Congress, and are a most essential abridgement of State sovereignty. Again, the restrictions upon States:

"No State shall enter into any treaty, alliance, or confederation, coin money, emit bills of credit, make any thing but gold and silver a tender in payment of debts, pass any law impairing the obligation of contracts;"

these, with a number of others, are important restrictions of the power of States, and were thought necessary to maintain the Union and to establish some fundamental uniform principles of public justice throughout the whole Union. So that I think no argument of force can be taken from the sovereignty of States. Where it has been abridged, it was thought necessary for the greater indispensable good of the whole. If the Constitution is found inconvenient in practice in this or any other particular, it is well that a regular mode is pointed out for amendment. But, while it remains, all offices legislative, executive, and judicial, both of the States and of the Union, are bound by oath to support it.

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One other objection has been suggested -- that if a State may be sued by a citizen of another State, then the United States may be sued by a citizen of any of the States, or, in other words, by any of their citizens. If this be a necessary consequence, it must be so. I doubt the consequence, from the different wording of the different clauses, connected with other reasons. When speaking of the United States, the Constitution says "controversies to which the United States shall be a party," not controversies between the United States and any of their citizens. When speaking of States, it says, "controversies between two or more States; between a State and citizens of another State." As to reasons for citizens

suing a different State which do not hold equally good for suing the United States, one may be that, as controversies between a State and citizens of another State might have a tendency to involve both States in contest, and perhaps in war, a common umpire to decide such controversies may have a tendency to prevent the mischief. That an object of this kind was had in view by the framers of the Constitution I have no doubt when I consider the clashing interfering laws which were made in the neighbouring States before the adoption of the Constitution, and some affecting the property of citizens of another State in a very different manner from that of their own citizens. But I do not think it necessary to enter fully into the question whether the United States are liable to be sued by an individual citizen in order to decide the point before us. Upon the whole, I am of opinion that the Constitution warrants a suit again a State by an individual citizen of another State.

A second question made in the case was whether the particular action of assumpsit could lie against a State? I think assumpsit will lie, if any suit, provided a State is capable of contracting.

The third question respects the competency of service, which I apprehend is good and proper, the service being by summons and notifying the suit to the Governor and the Attorney General; the Governor, who is the supreme executive magistrate and representative of the State, who is bound by oath to defend the State, and by the Constitution to give information to the legislature of all important matters which concern the interest of the State; the Attorney General, who is bound to defend the interest of the State in courts of Law.

Jay, Chief justice.

The question we are now to decide has been accurately stated, *viz.,* is a State suable by individual citizens of another State?

It is said that Georgia refuses to appear and answer to the plaintiff in this action because she is a sovereign State, and therefore not liable to such actions. In order to ascertain the merits

of this objection, let us enquire, 1st. In what sense Georgia is a sovereign State. 2nd. Whether suability is incompatible with such sovereignty. 3rd. Whether the Constitution (to which Georgia is a party) authorises such an action against her.

"Suability" and "suable" are words not in common use, but they concisely and correctly convey the idea annexed to them.

1st. In determining the sense in which Georgia is a sovereign State, it may be useful to turn our attention to the political situation we were in prior to the Revolution, and to the political rights which emerged from the Revolution. All the country now possessed by the United States was then a part of the dominions appertaining to the Crown of Great Britain. Every acre of land in this country was then held mediately or immediately by grants from that Crown. All the people of this country were then subjects of the King of Great Britain, and owed allegiance to him; and all the civil authority then existing or exercised here, flowed from the head of the British Empire. They were in strict sense fellow subjects, and in a variety of respects one people. When the Revolution commenced, the patriots did not assert that only the same affinity and social connection subsisted between the people of the colonies which subsisted between the people of Gaul, Britain, and Spain while Roman Provinces, *viz.,* only that affinity and social connection which result from the mere circumstance of being governed by the same Prince; different ideas prevailed, and gave occasion to the Congress of 1774 and 1775.

The Revolution, or rather the Declaration of Independence, found the people already united for general purposes, and at the same time providing for their more domestic concerns by State conventions and other temporary arrangements. From the Crown of Great Britain, the sovereignty of their country passed to the people of it, and it was then not an uncommon opinion that the unappropriated lands, which belonged to that Crown, passed not to the people of the Colony or States within whose limits they were situated, but to the whole people; on whatever principles this opinion rested, it did not give way to the other, and thirteen sovereignties were considered as emerged from the principles of the Revolution, combined with local convenience and considerations; the people nevertheless continued to consider themselves, in a national point of view, as one people; and they continued without

interruption to manage their national concerns accordingly; afterwards, in the hurry of the war and in the warmth of mutual confidence, they made a Confederation of the States the basis of a general government. Experience disappointed the expectations they had formed from it, and then the people, in their collective and national capacity, established the present Constitution. It is remarkable

that, in establishing it, the people exercised their own rights, and their own proper sovereignty, and, conscious of the plenitude of it, they declared with becoming dignity, "We the people of the United States, do ordain and establish this Constitution." Here we see the people acting as sovereigns of the whole country, and, in the language of sovereignty, establishing a Constitution by which it was their will that the State governments should be bound, and to which the State Constitutions should be made to conform. Every State Constitution is a compact made by and between the citizens of a State to govern themselves in a certain manner, and the Constitution of the United States is likewise a compact made by the people of the United States to govern themselves as to general objects in a certain manner. By this great compact however, many prerogatives were transferred to the national government, such as those of making war and peace, contracting alliances, coining money, etc. etc.

If then it be true that the sovereignty of the nation is in the people of the nation, and the residuary sovereignty of each State in the people of each State, it may be useful to compare these sovereignties with those in Europe, that we may thence be enabled to judge whether all the prerogatives which are allowed to the latter are so essential to the former. There is reason to suspect that some of the difficulties which embarrass the present question arise from inattention to differences which subsist between them.

It will be sufficient to observe briefly that the sovereignties in Europe, and particularly in England, exist on feudal principles. That system considers the Prince as the sovereign, and the people as his subjects; it regards his person as the object of allegiance, and excludes the idea of his being on an equal footing

with a subject, either in a court of justice or elsewhere. That system contemplates him as being the fountain of honor and authority, and from his grace and grant derives all franchises, immunities and privileges; it is easy to perceive that such a sovereign could not be amenable to a court of justice, or subjected to judicial controul and actual constraint. It was of necessity, therefore, that suability became incompatible with such sovereignty. Besides, the Prince having all the Executive powers, the judgment of the courts would, in fact, be only monitory, not mandatory to him, and a capacity to be advised is a distinct thing from a capacity to be sued. The same feudal ideas run through all their jurisprudence, and constantly remind us of the distinction between the Prince and the subject. No such ideas obtain here; at the Revolution, the sovereignty devolved on the people, and they are truly the sovereigns of the country, but they are sovereigns without subjects (unless the African

slaves among us may be so called), and have none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty.

From the differences existing between feudal sovereignties and governments founded on compacts, it necessarily follows that their respective prerogatives must differ. Sovereignty is the right to govern; a nation or State sovereign is the person or persons in whom that resides. In Europe, the sovereignty is generally ascribed to the Prince; here, it rests with the people; there, the sovereign actually administers the government; here, never in a single instance; our Governors are the agents of the people, and, at most, stand in the same relation to their sovereign in which regents in Europe stand to their sovereigns. Their Princes have personal powers, dignities, and preeminences; our rulers have none but official; nor do they partake in the sovereignty otherwise, or in any other capacity, than as private citizens.

2nd. The second object of enquiry now presents itself, *viz.,* whether suability is compatible with State sovereignty.

Suability, by whom? Not a subject, for in this country, there are none; not an inferior, for all the citizens being as to civil rights perfectly equal, there is not, in that respect, one citizen inferior to another. It is agreed that one free citizen may sue another, the obvious dictates of justice, and the purposes of society demanding it. It is agreed that one free citizen may sue any number on whom process can be conveniently executed; nay, in certain cases, one citizen may sue forty thousand; for where a corporation is sued, all the members of it are actually sued, though not personally sued. In this city there are forty odd thousand free citizens, all of whom may be collectively sued by any individual citizen. In the State of Delaware, there are fifty odd thousand free citizens, and what reason can be assigned why a free citizen who has demands against them should not prosecute them? Can the difference between forty odd thousand and fifty odd thousand make any distinction as to right? Is it not as easy, and as convenient to the public and parties, to serve a summons on the Governor and Attorney General of Delaware as on the Mayor or other Officers of the Corporation of Philadelphia? Will it be said that the fifty odd thousand citizens in Delaware, being associated under a State government, stand in a rank so superior to the forty odd thousand of Philadelphia, associated under their charter, that, although it may become the latter to meet an individual on an equal footing in a court of justice, yet that such a procedure would not comport with the dignity of the former? In this land of equal liberty, shall forty odd thousand in one place be compellable to do justice, and yet fifty odd thousand in

another place be privileged to do justice only as they may think proper? Such objections would not correspond with the equal rights we claim, with the equality we profess to admire and maintain, and with that popular sovereignty in which every citizen partakes. Grant that the Governor of Delaware holds an office of superior rank to the Mayor of Philadelphia; they are both nevertheless the officers of the people; and however more exalted the one may be than the other, yet, in the opinion of those who dislike aristocracy, that circumstance cannot be a good reason for impeding the course of justice.

If there be any such incompatibility as is pretended, whence does it arise? In what does it consist? There is at least one strong undeniable fact against this incompatibility, and that is this -- any one State in the Union may sue another State, in this Court, that is, all the people of one State may sue all the people of another State. It is plain then that a State may be sued, and hence it plainly follows that suability and State sovereignty are not incompatible. As one State may sue another State in this Court, it is plain that no degradation to a State is thought to accompany her appearance in this Court. It is not therefore to an appearance in this Court that the objection points. To what does it point? It points to an appearance at the suit of one or more citizens. But why it should be more incompatible that all the people of a State should be sued by one citizen than by one hundred thousand, I cannot perceive, the process in both cases being alike and the consequences of a judgment alike. Nor can I observe any greater inconveniences in the one case than in the other, except what may arise from the feelings of those who may regard a lesser number in an inferior light. But if any reliance be made on this inferiority as an objection, at least one half of its force is done away by this fact, *viz.,* that it is conceded that a State may appear in this Court as plaintiff against a single citizen as defendant; and the truth is that the State of Georgia is at this moment prosecuting an action in this Court against two citizens of South Carolina. *

The only remnant of objection, therefore, that remains is that the State is not bound to appear and answer as a defendant at the suit of an individual; but why it is unreasonable that she should be so bound is hard to conjecture. That rule is said to be a bad one which does not work both ways; the citizens of Georgia are content with a right of suing citizens of other States, but are not content that citizens of other States should have a right to sue them.

Let us now proceed to enquire whether Georgia has not, by being a party to the National Compact, consented to be suable by individual citizens of another State. This enquiry naturally leads our attention, 1st., to the design of the Constitution; 2nd., to the letter and express declaration in it.

Prior to the date of the Constitution, the people had not any national tribunal to which they could resort for justice; the distribution of justice was then confined to State judicatories, in whose institution and organization the people of the other States had no participation, and over whom they had not the least control. There was then no general court of appellate jurisdiction by whom the errors of State courts, affecting either the nation at large or the citizens of any other State, could be revised and corrected. Each State was obliged to acquiesce in the measure of justice which another State might yield to her or to her citizens, and that even in cases where State considerations were not always favorable to the most exact measure. There was danger that, from this source, animosities would in time result, and as the transition from animosities to hostilities was frequent in the history of independent States, a common tribunal for the termination of controversies became desirable from motives both of justice and of policy.

Prior also to that period, the United States had, by taking a place among the nations of the earth, become amenable to the laws of nations, and it was their interest as well as their duty to provide that those laws should be respected and obeyed; in their national character and capacity, the United States were responsible to foreign nations for the conduct of each State relative to the laws of nations and the performance of treaties, and there the inexpediency of referring all such questions to State courts, and particularly to the courts of delinquent States, became apparent. While all the States were bound to protect each and the citizens of each, it was highly proper and reasonable that they should be in a capacity not only to cause justice to be done to each and the citizens of each, but also to cause justice to be done by each and the citizens of each, and that not by violence and force, but in a stable, sedate, and regular course of judicial procedure.

These were among the evils against which it was proper for the nation -- that is, the people -- of all the United States to provide by a national judiciary, to be instituted by the whole nation and to be responsible to the whole nation.

Let us now turn to the Constitution. The people therein declare that their design in establishing it comprehended six objects. 1st. To form a more perfect union. 2nd.

To establish justice. 3rd. To ensure domestic tranquillity. 4th. To provide for the common defence. 5th. To promote the general welfare. 6th. To secure the blessings of liberty to themselves and their posterity. It would be pleasing and useful to consider and trace the relations which each of these objects bears to the others,

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and to show that they collectively comprise everything requisite, with the blessing of Divine Providence, to render a people prosperous and happy. On the present occasion, such disquisitions would be unseasonable because foreign to the subject immediately under consideration.

It may be asked, what is the precise sense and latitude in which the words "to establish justice," as here used, are to be understood? The answer to this question will result from the provisions made in the Constitution on this head. They are specified in the second section of the third article, where it is ordained that the judicial power of the United States shall extend to ten descriptions of cases, *viz.,* 1st. To all cases arising under this Constitution, because the meaning, construction, and operation of a compact ought always to be ascertained by all the parties, or by authority derived only from one of them. 2nd. To all cases arising under the laws of the United States, because, as such laws, constitutionally made, are obligatory on each State, the measure of obligation and obedience ought not to be decided and fixed by the party from whom they are due, but by a tribunal deriving authority from both the parties. 3rd. To all cases arising under treaties made by their authority; because, as treaties are compacts made by, and obligatory on, the whole nation, their operation ought not to be affected or regulated by the local laws or courts of a part of the nation. 4th. To all cases affecting Ambassadors, or other public Ministers and Consuls, because, as these are officers of foreign nations whom this nation are bound to protect and treat according to the laws of nations, cases affecting them ought only to be cognizable by national authority. 5th. To all cases of Admiralty and Maritime jurisdiction, because, as the seas are the joint property of nations, whose right and privileges relative thereto are regulated by the law of nations and treaties, such cases

necessarily belong to national jurisdiction. 6th. To controversies to which the United States shall be a party, because, in cases in which the whole people are interested, it would not be equal or wise to let any one State decide and measure out the justice due to others. 7th. To controversies between two or more States, because domestic tranquillity requires that the contentions of States should be peaceably terminated by a common judicatory, and, because, in a free country, justice ought not to depend on the will of either of the litigants. 8th. To controversies between a State and citizens of another State, because in case a State (that is, all the citizens of it) has demands against some citizens of another State, it is better that she should prosecute their demands in a national court than in a court of the State to which those citizens belong, the danger of irritation and criminations arising from apprehensions and

suspicions of partiality being thereby obviated. Because, in cases where some citizens of one State have demands against all the citizens of another State, the cause of liberty and the rights of men forbid that the latter should be the sole judges of the justice due to the latter, and true Republican government requires that free and equal citizens should have free, fair, and equal justice. 9th. To controversies between citizens of the same State, claiming lands under grants of different States, because, as the rights of the two States to grant the land are drawn into question, neither of the two States ought to decide the controversy. 10th. To controversies between a State or the citizens thereof and foreign states, citizens or subjects, because, as every nation is responsible for the conduct of its citizens towards other nations, all questions touching the justice due to foreign nations or people ought to be ascertained by, and depend on, national authority. Even this cursory view of the judicial powers of the United States leaves the mind strongly impressed with the importance of them to the preservation of the tranquillity, the equal sovereignty, and the equal right of the people.

The question now before us renders it necessary to pay particular attention to that part of the second section which extends the judicial power "to controversies between a State and citizens of another State." It is contended that this ought to

be construed to reach none of these controversies excepting those in which a State may be plaintiff. The ordinary rules for construction will easily decide whether those words are to be understood in that limited sense.

This extension of power is remedial, because it is to settle controversies. It is therefore to be construed liberally. It is politic, wise, and good that not only the controversies in which a State is plaintiff, but also those in which a State is defendant, should be settled; both cases therefore are within the reason of the remedy, and ought to be so adjudged unless the obvious, plain, and literal sense of the words forbid it. If we attend to the words, we find them to be express, positive, free from ambiguity, and without room for such implied expressions: "The judicial power of the United States shall extend to controversies between a State and citizens of another State." If the Constitution really meant to extend these powers only to those controversies in which a State might be plaintiff, to the exclusion of those in which citizens had demands against a State, it is inconceivable that it should have attempted to convey that meaning in words not only so incompetent, but also repugnant to it; if it meant to exclude a certain class of these controversies, why were they not expressly excepted; on the contrary, not even an intimation of such intention appears in

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any part of the Constitution. It cannot be pretended that, where citizens urge and insist upon demands against a State, which the State refuses to admit and comply with, that there is no controversy between them. If it is a controversy between them, then it clearly falls not only within the spirit, but the very words, of the Constitution. What is it to the cause of justice, and how can it effect the definition of the word "controversy?;" whether the demands which cause the dispute are made by a State against citizens of another State or by the latter against the former? When power is thus extended to a controversy, it necessarily, as to all judicial purposes, is also extended to those between whom it subsists.

The exception contended for would contradict and do violence to the great and leading principles of a free and equal national government, one of the great

objects of which is to ensure justice to all -- to the few against the many as well as to the many against the few. It would be strange indeed that the joint and equal sovereigns of this country should, in the very Constitution by which they professed to establish justice, so far deviate from the plain path of equality and impartiality as to give to the collective citizens of one State a right of suing individual citizens of another State, and yet deny to those citizens a right of suing them. We find the same general and comprehensive manner of expressing the same ideas in a subsequent clause in which the Constitution ordains that,

"in all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a party, the Supreme court shall have original jurisdiction."

Did it mean here party plaintiff? If that only was meant, it would have been easy to have found words to express it. Words are to be understood in their ordinary and common acceptation, and the word "party" being in common usage, applicable both to plaintiff and defendant, we cannot limit it to one of them in the present case. We find the Legislature of the United States expressing themselves in the like general and comprehensive manner; they speak in the thirteenth section of the judicial Act, of controversies where a State is a party, and as they do not impliedly or expressly apply that term to either of the litigants in particular, we are to understand them as speaking of both. In the same section, they distinguish the cases where Ambassadors are plaintiffs from those in which Ambassadors are defendants, and make different provisions respecting those cases; and it is not unnatural to suppose that they would in like manner have distinguished between cases where a State was plaintiff and where a State was defendant if they had intended to make any difference between them, or if they had apprehended that the Constitution had made any difference between them.

I perceive, and therefore candor urges me to mention, a circumstance which seems to favor the opposite side of the question. It is this: the same section of the

Constitution which extends the judicial power to controversies "between a State and the citizens of another State" does also extend that power to controversies to which the United States are a party. Now it may be said, if the word party comprehends both plaintiff and defendant, it follows that the United States may be sued by any citizen between whom and them there may be a controversy. This appears to me to be fair reasoning, but the same principles of candour which urge me to mention this objection also urge me to suggest an important difference between the two cases. It is this: in all cases of actions against States or individual citizens, the national courts are supported in all their legal and constitutional proceedings and judgments by the arm of the executive power of the United States; but in cases of actions against the United States, there is no power which the courts can call to their aid. From this distinction, important conclusions are deducible, and they place the case of a State, and the case of the United States, in very different points of view.

I wish the state of society was so far improved, and the science of government advanced to such a degree of perfection, as that the whole nation could, in the peaceable course of law, be compelled to do justice, and be sued by individual citizens. Whether that is or is not now the case ought not to be thus collaterally and incidentally decided. I leave it a question.

As this opinion, though deliberately formed, has been hastily reduced to writing between the intervals of the daily adjournments, and while my mind was occupied and wearied by the business of the day, I fear it is less concise and connected than it might otherwise have been. I have made no references to cases, because I know of none that are not distinguishable from this case; nor does it appear to me necessary to show that the sentiments of the best writers on government and the rights of men harmonize with the principles which direct my judgment on the present question. The acts of the former Congresses, and the acts of many of the State Conventions, are replete with similar ideas, and, to the honor of the United States, it may be observed that in no other country are subjects of this kind better, if so well, understood. The attention and attachment of the Constitution to the equal rights of the people are discernable in almost every sentence of it, and it is

to be regretted that the provision in it which we have been considering has not in every instance received the approbation and acquiescence which it merits. Georgia has in strong language advocated the cause of republican equality, and there is reason to

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hope that the people of that State will yet perceive that it would not have been consistent with that equality to have exempted the body of her citizens from that suability which they are at this moment exercising against citizens of another State.

For my own part, I am convinced that the sense in which I understand and have explained the words "controversies between States and citizens of another State" is the true sense. The extension of the judiciary power of the United States to such controversies appears to me to be wise, because it is honest and because it is useful. It is honest because it provides for doing justice without respect of persons, and, by securing individual citizens as well as States in their respective rights, performs the promise which every free government makes to every free citizen of equal justice and protection. It is useful because it is honest; because it leaves not even the most obscure and friendless citizen without means of obtaining justice from a neighbouring State; because it obviates occasions of quarrels between States on account of the claims of their respective citizens; because it recognizes and strongly rests on this great moral truth that justice is the same whether due from one man or a million, or from a million to one man; because it teaches and greatly appreciates the value of our free republican national government, which places all our citizens on an equal footing, and enables each and every of them to obtain justice without any danger of being overborne by the weight and number of their opponents; and because it brings into action and enforces this great and glorious principle -- that the people are the sovereign of this country, and consequently that fellow citizens and joint sovereigns cannot be degraded by appearing with each other in their own courts to have their controversies determined. The people have reason to prize and rejoice in such valuable privileges, and they ought not to forget that nothing but the free course of

constitutional law and government can ensure the continuance and enjoyment of them.

For the reasons before given, I am clearly of opinion that a State is suable by citizens of another State; but left I should be understood in a latitude beyond my meaning, I think it necessary to subjoin this caution, *viz.,* that such suability may nevertheless not extend to all the demands and to every kind of action; there may be exceptions. For instance, I am far from being prepared to say that an individual may sue a State on bills of credit issued before the Constitution was established, and which were issued and received on the faith of the State, and at a time when no ideas or expectations of judicial interposition were entertained or contemplated.

The following order was made:

By The court. It is ordered that the plaintiff in this cause do file his declaration on or before the first day of March next.

Ordered that certified copies of the said declaration be served on the Governor and Attorney General of the State of Georgia, on or before the first day of June next.

Ordered that, unless the said State shall either in due form appear, or show cause to the contrary in this Court, by the first day of next Term, judgment by default shall be entered against the said State. *

* *Georgia v. Brailsford, et al., ante.*

* In February Term, 1794, judgment was rendered for the plaintiff, and a Writ of Enquiry awarded. The Writ, however, was not sued out and executed, so that this cause, and all the other suits against States, were swept at once from the Records of the Court by the amendment to the Federal Constitution, agreeably to the unanimous determination of the judges, in *Hollingsworth et al. v. Virginia,* argued at February Term, 1798.

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