

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

land patents issued to the state by the United States in breach of its trust obligations to the Indian.⁹⁶¹ In *United States v. West Virginia*,⁹⁶² the Court refused to take jurisdiction of a suit in equity brought by the United States to determine the navigability of the New and Kanawha Rivers on the ground that the jurisdiction in such suits is limited to cases and controversies and does not extend to the adjudication of mere differences of opinion between the officials of the two governments. A few years earlier, however, it had taken jurisdiction of a suit by the United States against Utah to quiet title to land forming the beds of certain sections of the Colorado River and its tributaries with the states.⁹⁶³ Similarly, it took jurisdiction of a suit brought by the United States against California to determine the ownership of and paramount rights over the submerged land and the oil and gas thereunder off the coast of California between the low-water mark and the three-mile limit.⁹⁶⁴ Like suits were decided against Louisiana and Texas in 1950.⁹⁶⁵

Immunity of the United States From Suit.—Pursuant to the general rule that a sovereign cannot be sued in its own courts, the judicial power does not extend to suits against the United States unless Congress by statute consents to such suits. This rule first emanated in embryonic form in an *obiter dictum* by Chief Justice Jay in *Chisholm v. Georgia*, where he indicated that a suit would not lie against the United States because “there is no power which the courts can call to their aid.”⁹⁶⁶ In *Cohens v. Virginia*,⁹⁶⁷ also in dictum, Chief Justice Marshall asserted, “the universally received opinion is that no suit can be commenced or prosecuted against the United States.” The issue was more directly in question in *United States v. Clarke*,⁹⁶⁸ where Chief Justice Marshall stated that, as the United States is “not suable of common right, the party who institutes such suit must bring his case within the authority of some act of Congress, or the court cannot exercise jurisdiction over it.” He thereupon ruled that the act of May 26, 1830, for the final settlement of land claims in Florida condoned the suit. The doctrine of the exemption of the United States from suit was repeated in vari-

⁹⁶¹ *United States v. Minnesota*, 270 U.S. 181 (1926). For an earlier suit against a state by the United States, see *United States v. Michigan*, 190 U.S. 379 (1903).

⁹⁶² 295 U.S. 463 (1935).

⁹⁶³ *United States v. Utah*, 283 U.S. 64 (1931).

⁹⁶⁴ *United States v. California*, 332 U.S. 19 (1947).

⁹⁶⁵ *United States v. Louisiana*, 339 U.S. 699 (1950); *United States v. Texas*, 339 U.S. 707 (1950). See also *United States v. Maine*, 420 U.S. 515 (1975).

⁹⁶⁶ 2 U.S. (2 Dall.) 419, 478 (1793).

⁹⁶⁷ 19 U.S. (6 Wheat.) 264, 412 (1821).

⁹⁶⁸ 33 U.S. (8 Pet.) 436, 444 (1834).