Expansion of the Immunity of the States.—Until the period following the Civil War, Chief Justice Marshall's understanding of the Amendment generally prevailed. The aftermath of that conflict, however, presented the Court occasion to consider anew the circumstances and import of the Amendment's adoption. Following the war, Congress effectively gave the federal courts general federal question jurisdiction,[19] at a time when a large number of states in the South were defaulting on their revenue bonds in violation of the Contract Clause of the Constitution.[20] As bondholders consequently sought relief in federal courts, the Supreme Court gradually worked itself into the position of holding that the Eleventh Amendment, or, more properly speaking, the principles "of which the Amendment is but an exemplification,"[21] is a bar not only of suits against a state by citizens of other states, but also of suits brought by citizens of that state itself.[22]

Expansion as a formal holding occurred in *Hans v. Louisiana*,[23] a suit against the state by a resident of that state brought in federal court under federal question jurisdiction, alleging a violation of the Contract Clause in the state's repudiation of its obligation to pay interest on certain bonds. Admitting that the Amendment on its face prohibited only the entertaining of a suit against a state by citizens of another state, or citizens or subjects of a foreign state, the Court nonetheless thought the literal language was an insufficient basis for decision. Rather, wrote Justice Bradley for the Court, the Eleventh Amendment was a result of the "shock of surprise throughout the country" at the *Chisholm* decision and reflected the determination that the decision was wrong and that federal jurisdiction did not extend to making defendants of unwilling states.[24]

Under this view, the amendment reversed an erroneous decision and restored the proper interpretation of the Constitution. The views of the opponents of subjecting states to suit "were most sensible and just; and [those views] apply equally to the present case

---

[19] Act of March 3, 1875, ch. 137, § 1, 18 Stat. 470. *See* discussion under "Development of Federal Question Jurisdiction," *supra*.

[20] *See*, *e.g.*, Orth, *The Eleventh Amendment and the North Carolina State Debt*, 59 N.C. L. Rev. 747 (1981); Orth, *The Fair Fame and Name of Louisiana: The Eleventh Amendment and the End of Reconstruction*, 2 Tul. Law. 2 (1980); Orth, *The Virginia State Debt and the Judicial Power of the United States*, in Ambivalent Legacy: A Legal History of the South 106 (D. Bodenhamer & J. Ely eds., 1983).

[21] *Ex parte* New York (No. 1), 256 U.S. 490, 497 (1921).

[22] *E.g.*, *In re* Ayers, 123 U.S. 443 (1887); Hagood v. Southern, 117 U.S. 52 (1886); *The Virginia Coupon Cases*, 114 U.S. 269 (1885); Cunningham v. Macon & Brunswick R.R., 109 U.S. 446 (1883); Louisiana v. Jumel, 107 U.S. 711 (1882). In Antoni v. Greenhow, 107 U.S. 769, 783 (1883), three concurring Justices propounded the broader reading of the Amendment that soon prevailed.

[23] 134 U.S. 1 (1890).

[24] 134 U.S. at 11.