

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

Controversies Between Citizens of the Same State Claiming Land Under Grants of Different States

The genesis of this clause was in the report of the Committee of Detail which vested the power to resolve such land disputes in the Senate,¹¹³³ but this proposal was defeated in the Convention,¹¹³⁴ which then added this clause to the jurisdiction of the federal judiciary without reported debate.¹¹³⁵ The motivation for this clause was the existence of boundary disputes affecting ten states at the time the Convention met. With the adoption of the Northwest Ordinance of 1787, the ultimate settlement of the boundary disputes, and the passing of land grants by the states, this clause, never productive of many cases, became obsolete.¹¹³⁶

Controversies Between a State, or the Citizens Thereof, and Foreign States, Citizens, or Subjects

The scope of this jurisdiction has been limited both by judicial decisions and the Eleventh Amendment. By judicial application of the law of nations, a foreign state is immune from suit in the federal courts without its consent,¹¹³⁷ an immunity which extends to suits brought by states of the American Union.¹¹³⁸ Conversely, the Eleventh Amendment has been construed to bar suits by foreign states against a state of the United States.¹¹³⁹ Consequently, the jurisdiction conferred by this clause comprehends only suits brought by a state against citizens or subjects of foreign states, by foreign states against American citizens, citizens of a state against the citizens or subjects of a foreign state, and by aliens against citizens of a state.¹¹⁴⁰

¹¹³³ 2 M. Farrand, *supra* at 162, 171, 184.

¹¹³⁴ *Id.* at 400–401.

¹¹³⁵ *Id.* at 431.

¹¹³⁶ *See* *Pawlet v. Clark*, 13 U.S. (9 Cr.) 292 (1815). *Cf.* *City of Trenton v. New Jersey*, 262 U.S. 182 (1923).

¹¹³⁷ *The Schooner Exchange v. McFaddon*, 11 U.S. (7 Cr.) 116 (1812); *Berizzi Bros. Co. v. S.S. Pesaro*, 271 U.S. 562 (1926); *Compania Espanola v. The Navemar*, 303 U.S. 68 (1938); *Guaranty Trust Co. v. United States*, 304 U.S. 126, 134 (1938).

¹¹³⁸ *Principality of Monaco v. Mississippi*, 292 U.S. 313, 330 (1934).

¹¹³⁹ 292 U.S. at 330.

¹¹⁴⁰ But, in the absence of a federal question, there is no basis for jurisdiction between the subjects of a foreign state. *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959). The Foreign Sovereign Immunities Act of 1976, Pub. L. 94–538, 90 Stat. 2891, amending various sections of title 28 U.S.C., comprehensively provided jurisdictional bases for suits by and against foreign states and appears as well to comprehend suits by an alien against a foreign state which would be beyond the constitutional grant. However, in the only case in which that matter has been an issue before it, the Court has construed the Act as creating a species of federal question jurisdiction. *Verlinden B. V. v. Central Bank of Nigeria*, 461 U.S. 480 (1983).