preme Court of suits to which a state is a party had its origin in experience. Prior to independence, disputes between colonies claiming charter rights to territory were settled by the Privy Council. Under the Articles of Confederation, Congress was made "the last resort on appeal" to resolve "all disputes and differences . . . between two or more States concerning boundary, jurisdiction, or any other cause whatever," and to constitute what in effect were *ad hoc* arbitral courts for determining such disputes and rendering a final judgment therein. When the Philadelphia Convention met in 1787, serious disputes over boundaries, lands, and river rights involved ten states.[997] It is hardly surprising, therefore, that during its first 60 years the only state disputes coming to the Supreme Court were boundary disputes[998] or that such disputes constitute the largest single number of suits between states. Since 1900, however, as the result of the increasing mobility of population and wealth and the effects of technology and industrialization, other types of cases have occurred with increasing frequency.

Boundary Disputes: The Law Applied.—Of the earlier examples of suits between states, that between New Jersey and New York[999] is significant for the application of the rule laid down earlier in *Chisholm v. Georgia* that the Supreme Court may proceed *ex parte* if a state refuses to appear when duly summoned. The long drawn out litigation between Rhode Island and Massachusetts is of even greater significance for its rulings, after the case had been pending for seven years, that though the Constitution does not extend the judicial power to all controversies between states, yet it does not exclude any,[1000] that a boundary dispute is a justiciable and not a political question,[1001] and that a prescribed rule of decision is unnecessary in such cases. On the last point, Justice Baldwin stated: "The submission by the sovereigns, or states, to a court of law or equity, of a controversy between them, without prescribing any rule of decision, gives power to decide according to the appropriate law of the case (11 Ves. 294); which depends on the subject-matter, the source and nature of the claims of the parties, and the law which governs them. From the time of such submission, the question ceases to be a political one, to be decided by the *sic volo, sic jubeo*, of po-

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[997] Warren, *The Supreme Court and Disputes Between States*, 34 BULL. OF WILLIAM AND MARY, NO. 4 (1940), 7–11. For a more comprehensive treatment of background as well as the general subject, *see* C. WARREN, THE SUPREME COURT AND THE SOVEREIGN STATES (1924).

[998] Id. at 13. However, only three such suits were brought in this period, 1789–1849. During the next 90 years, 1849–1939, at least twenty-nine such suits were brought. Id. at 13, 14.

[999] New Jersey v. New York, 30 U.S. (5 Pet.) 284 (1931).

[1000] Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657, 721 (1838).

[1001] 37 U.S. at 736–37.