

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

controversies than that in cases between private parties.¹⁰³⁰ This it does by holding rigorously to the rule that all the party defendants be citizens of other states¹⁰³¹ and by adhering to congressional distribution of its original jurisdiction concurrently with that of other federal courts.¹⁰³²

Jurisdiction Confined to Civil Cases.—In *Cohens v. Virginia*,¹⁰³³ there is a dictum to the effect that the original jurisdiction of the Supreme Court does not include suits between a state and its own citizens. Long afterwards, the Supreme Court dismissed an action for want of jurisdiction because the record did not show that the corporation against which the suit was brought was chartered in another state.¹⁰³⁴ Subsequently, the Court has ruled that it will not entertain an action by a state to which its citizens are either parties of record or would have to be joined because of the effect of a judgment upon them.¹⁰³⁵ In his dictum in *Cohens v. Virginia*, Chief Justice Marshall also indicated that perhaps no jurisdiction existed over suits by states to enforce their penal laws.¹⁰³⁶ Sixty-seven years later, the Court wrote this dictum into law in *Wisconsin v. Pelican Ins. Co.*¹⁰³⁷ Wisconsin sued a Louisiana corporation to recover a judgment rendered in its favor by one of its own courts. Relying partly on the rule of international law that the courts of no country execute the penal laws of another, partly upon the 13th section of the Judiciary Act of 1789, which vested the Supreme Court with exclusive jurisdiction of controversies of a civil nature where a state is a party, and partly on Justice Iredell's dissent in *Chisholm v. Georgia*,¹⁰³⁸ where he confined the term "controversies" to civil suits, Justice Gray ruled for the Court that for purposes of original jurisdiction, "controversies between a State and citizens of another State" are confined to civil suits.¹⁰³⁹

The State's Real Interest.—Ordinarily, a state may not sue in its name unless it is the real party in interest with real inter-

¹⁰³⁰ *Massachusetts v. Mellon*, 262 U.S. 447 (1923); *Florida v. Mellon*, 273 U.S. 12 (1927); *New Jersey v. Sargent*, 269 U.S. 328 (1926).

¹⁰³¹ *Pennsylvania v. Quicksilver Co.*, 77 U.S. (10 Wall.) 553 (1871); *California v. Southern Pacific Co.*, 157 U.S. 229 (1895); *Minnesota v. Northern Securities Co.*, 184 U.S. 199 (1902).

¹⁰³² *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265 (1888).

¹⁰³³ 19 U.S. (6 Wheat.) 264, 398–99 (1821).

¹⁰³⁴ *Pennsylvania v. Quicksilver Mining Co.*, 77 U.S. (10 Wall.) 553 (1871).

¹⁰³⁵ *California v. Southern Pacific Co.*, 157 U.S. 229 (1895); *Minnesota v. Northern Securities Co.*, 184 U.S. 199 (1902).

¹⁰³⁶ 19 U.S. (6 Wheat.) at 398–99.

¹⁰³⁷ 127 U.S. 265 (1888).

¹⁰³⁸ 2 U.S. (2 Dall.) 419, 431–32 (1793).

¹⁰³⁹ 127 U.S. at 289–300.