as to that then under discussion. The letter is appealed to now, as it was then, as a ground for sustaining a suit brought by an individual against a State. The reason against it is as strong in this case as it was in that. It is an attempt to strain the Constitution and the law to a construction never imagined or dreamed of." [25] "The truth is, that the cognizance of suits and actions unknown to the law, and forbidden by the law, was not contemplated by the Constitution when establishing the judicial power of the United States. . . . The suability of a State without its consent was a thing unknown to the law." [26] Thus, although the literal terms of the Amendment did not so provide, "the manner in which [*Chisholm*] was received by the country, the adoption of the Eleventh Amendment, the light of history and the reason of the thing," [27] led the Court unanimously to hold that states could not be sued by their own citizens on grounds arising under the Constitution and laws of the United States.

Then, in *Ex parte New York (No. 1)*,[28] the Court held that, absent consent to suit, a state was immune to suit in admiralty, the Eleventh Amendment's reference to "any suit in law or equity" notwithstanding. "That a State may not be sued without its consent is a fundamental rule of jurisprudence . . . of which the Amendment is but an exemplification. . . . It is true the Amendment speaks only of suits in law or equity; but this is because . . . the Amendment was the outcome of a purpose to set aside the effect of the decision of this court in *Chisholm v. Georgia* . . . from which it naturally came to pass that the language of the Amendment was particularly phrased so as to reverse the construction adopted in that case." [29] Just as *Hans v. Louisiana* had demonstrated the "impropriety of construing the Amendment" so as to permit federal question suits against a state, so "it seems to us equally clear that it cannot with propriety be construed to leave open a suit against a State in the admiralty jurisdiction by individuals, whether its own citizens or

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[25] 134 U.S. at 14–15.

[26] 134 U.S. at 15, 16.

[27] 134 U.S. at 18. The Court acknowledged that Chief Justice Marshall's opinion in Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 382–83, 406–07, 410–12 (1821), was to the contrary, but observed that the language was unnecessary to the decision and thus dictum, "and though made by one who seldom used words without due reflection, ought not to outweigh the important considerations referred to which lead to a different conclusion." 134 U.S. at 20.

[28] 256 U.S. 490 (1921).

[29] 256 U.S. at 497–98.