

ginia,¹⁰ Chief Justice Marshall ruled for the Court that the prosecution of a writ of error to review a judgment of a state court alleged to be in violation of the Constitution or laws of the United States did not commence or prosecute a suit against the state but was simply a continuation of one commenced by the state, and thus could be brought under § 25 of the Judiciary Act of 1789.¹¹ But, in the course of the opinion, the Chief Justice attributed adoption of the Eleventh Amendment not to objections to subjecting states to suits *per se* but to well-founded concerns about creditors being able to maintain suits in federal courts for payment,¹² and stated his view that the Eleventh Amendment

of the Court during this period, see *Georgia v. Madrazo*, *supra*; *United States v. Peters*, 9 U.S. (5 Cr.) 115 (1809); *Ex parte Madrazo*, 32 U.S. (7 Pet.) 627 (1833), and was held to be in error in *Ex parte New York* (No. 1), 256 U.S. 490 (1921).

¹⁰ 19 U.S. (6 Wheat.) 264 (1821).

¹¹ 1 Stat. 73, 85.

¹² "It is a part of our history that, at the adoption of the constitution, all the states were greatly indebted; and the apprehension that these debts might be prosecuted in the federal courts, formed a very serious objection to that instrument. Suits were instituted; and the court maintained its jurisdiction. The alarm was general; and, to quiet the apprehensions that were so extensively entertained, this amendment was proposed in congress, and adopted by the state legislatures. That its motive was not to maintain the sovereignty of a state from the degradation supposed to attend a compulsory appearance before the tribunal of the nation, may be inferred from the terms of the amendment. It does not comprehend controversies between two or more states, or between a state and a foreign state. The jurisdiction of the court still extends to these cases: and in these, a state may still be sued. We must ascribe the amendment, then, to some other cause than the dignity of a state. There is no difficulty in finding this cause. Those who were inhibited from commencing a suit against a state, or from prosecuting one which might be commenced before the adoption of the amendment, were persons who might probably be its creditors. There was not much reason to fear that foreign or sister states would be creditors to any considerable amount, and there was reason to retain the jurisdiction of the court in those cases, because it might be essential to the preservation of peace. The amendment, therefore, extended to suits commenced or prosecuted by individuals, but not to those brought by states." 19 U.S. at 406–07.