

quish state-controlled property¹²⁰ and culminated in the broad reading of Eleventh Amendment immunity in *Hans v. Louisiana*.¹²¹

Two of the leading cases, as were many cases of this period, were suits attempting to prevent Southern states from defaulting on bonds.¹²² In *Louisiana v. Jumel*,¹²³ a Louisiana citizen sought to compel the state treasurer to apply a sinking fund that had been created under the earlier constitution for the payment of the bonds after a subsequent constitution had abolished this provision for retiring the bonds. The proceeding was held to be a suit against the state.¹²⁴ Then, *In re Ayers*¹²⁵ purported to supply a rationale for cases on the issuance of mandamus or injunctive relief against state officers that would have severely curtailed federal judicial power. Suit against a state officer was not barred when his action, aside from any official authority claimed as its justification, was a wrong simply as an individual act, such as a trespass, but if the act of the officer did not constitute an individual wrong and was something that only a state, through its officers, could do, the suit was in actuality a suit against the state and was barred.¹²⁶ That is, the unconstitutional nature of the state statute under which the officer acted did not itself constitute a private cause of action. For that, one must be able to point to an independent violation of a common law right.¹²⁷

¹²⁰ Judicial reluctance to confront government officials over government-held property did not extend in like manner in a federal context, as was evident in *United States v. Lee*, the first case in which the sovereign immunity of the United States was claimed and rejected. *United States v. Lee*, 106 U.S. 196 (1882). See Article III, "Suits Against United States Officials." However, the Court sustained the suit against the federal officers by only a 5-to-4 vote, and the dissent presented the arguments that were soon to inform Eleventh Amendment cases.

¹²¹ 134 U.S. 1 (1890).

¹²² See Gibbons, *The Eleventh Amendment and State Sovereign Immunity: A Reinterpretation*, 83 COLUM. L. REV. 1889, 1968–2003 (1983); Orth, *The Interpretation of the Eleventh Amendment, 1798–1908: A Case Study of Judicial Power*, 1983 U. ILL. L. REV. 423.

¹²³ 107 U.S. 711 (1882).

¹²⁴ "The relief asked will require the officers against whom the process is issued to act contrary to the positive orders of the supreme political power of the State, whose creatures they are, and to which they are ultimately responsible in law for what they do. They must use the public money in the treasury and under their official control in one way, when the supreme power has directed them to use it in another, and they must raise more money by taxation when the same power has declared that it shall not be done." 107 U.S. at 721. See also *Christian v. Atlantic & N.C. R.R.*, 133 U.S. 233 (1890).

¹²⁵ 123 U.S. 443 (1887).

¹²⁶ 123 U.S. at 500–01, 502.

¹²⁷ *Ayers* sought to enjoin state officials from bringing suit under an allegedly unconstitutional statute purporting to overturn a contract between the state and the bondholders to receive the bond coupons for tax payments. The Court asserted that the state's contracts impliedly contained the state's immunity from suit, so that express withdrawal of a supposed consent to be sued was not a violation of the con-