current jurisdiction in some classes of such cases.[1159] Sustained in the early years on circuit,[1160] this concurrent jurisdiction was finally approved by the Court itself.[1161] The Court has also relied on the first Congress's interpretation of the meaning of Article III in declining original jurisdiction of an action by a state to enforce a judgment for a pecuniary penalty awarded by one of its own courts.[1162] Noting that § 13 of the Judiciary Act had referred to "controversies of a civil nature," Justice Gray declared that it "was passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument, and is contemporaneous and weighty evidence of its true meaning." [1163]

However, another clause of § 13 of the Judiciary Act of 1789 was not accorded the same presumption by Chief Justice Marshall, who, interpreting it to give the Court power to issue a writ of mandamus on an original proceeding, declared that, as Congress could not restrict the original jurisdiction, neither could it enlarge it, and he pronounced the clause void.[1164] Although the Chief Justice's interpretation of the meaning of the clause may be questioned, no one has questioned the constitutional principle it proclaimed. Although the rule deprives Congress of power to expand or contract the jurisdiction, it allows a considerable latitude of interpretation to the Court itself. In some cases, such as *Missouri v. Holland*,[1165] the Court has manifested a tendency toward a liberal construction of its original jurisdiction, but the more usual view is that "our original jurisdiction should be invoked sparingly." [1166] Original jurisdiction "is lim-

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[1159] In § 3 of the 1789 Act. The present division is in 28 U.S.C. § 1251.

[1160] United States v. Ravara, 2 U.S. (2 Dall.) 297 (C.C.Pa. 1793).

[1161] Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657 (1838); Bors v. Preston, 111 U.S. 252 (1884); Ames v. Kansas ex rel. Johnston, 111 U.S. 449 (1884). Such suits could be brought and maintained in state courts as well. Plaquemines Tropical Fruit Co. v. Henderson, 170 U.S. 511 (1898); Ohio ex rel. Popovici v. Agler, 280 U.S. 379 (1930).

[1162] Wisconsin v. Pelican Ins. Co., 127 U.S. 265 (1888).

[1163] 127 U.S. at 297. *See also* the dictum in Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 398–99 (1821); Chisholm v. Georgia, 2 U.S. (2 Dall.) 419, 431–32 (1793).

[1164] Marbury v. Madison, 5 U.S. (1 Cr.) 137 (1803). The Chief Justice declared that "a negative or exclusive sense" had to be given to the affirmative enunciation of the cases to which original jurisdiction extends. Id. at 174. This exclusive interpretation has been since followed. *Ex parte* Bollman, 8 U.S. (4 Cr.) 75 (1807); New Jersey v. New York, 30 U.S. (5 Pet.) 284 (1831); *Ex parte* Barry, 43 U.S. (2 How.) 65 (1844); *Ex parte* Vallandigham, 68 U.S. (1 Wall.) 243, 252 (1864); *Ex parte* Yerger, 75 U.S. (8 Wall.) 85, 98 (1869). In the curious case of *Ex parte* Levitt, 302 U.S. 633 (1937), the Court was asked to unseat Justice Black on the ground that his appointment violated Article I. § 6, cl. 2. Although it rejected petitioner's application, the Court did not point out that it was being asked to assume original jurisdiction in violation of Marbury v. Madison.

[1165] 252 U.S. 416 (1920). *See also* South Carolina v. Katzenbach, 383 U.S. 301 (1966), and Oregon v. Mitchell, 400 U.S. 112 (1970).

[1166] Utah v. United States, 394 U.S. 89, 95 (1968).