

Chisholm v. Georgia

2 Dall. 419 (1793)

Two citizens of South Carolina brought suit against Georgia to recover British-owned property which had been confiscated by Georgia during the Revolutionary War. State officials refused to appear in court and vigorously denied the Court's jurisdiction. The Court's decision provoked widespread criticism, and two days later the Eleventh Amendment was proposed in Congress. It provided that federal judicial power was not to extend to suits against one of the states commenced by citizens of another state or a foreign nation. Despite Federalist opposition, the amendment was ratified in 1798. Through the years, however, the Court has diminished the force of the amendment, particularly by allowing suits against state officials. Four members of the Court (Chief Justice Jay, and Justices Wilson, Blair and Cushing) held in seriatim opinions that a state was not sovereign and could be sued. Justice Iredell dissented on the grounds that the case was controlled by the common law and that under the common law states enjoyed sovereign immunity.

From the opinion of Chief Justice Jay:

The question we are now to decide has been accurately stated, namely, is a State suable by individual citizens of another State? It is said that Georgia refuses to appear and answer to the plaintiff in this action, because she is a sovereign State, and therefore not liable to such actions

[A]ny one State in the Union may sue another State in this court, that is, all the people of one State may sue all the people of another State. It is plain, then, that a State may be sued, and hence it plainly follows that suability and state sovereignty are not incompatible. As one State may sue another State in this court, it is plain that no degradation to a State is thought to accompany her appearance in this court. It is not, therefore, to an appearance in this court that the objection points. To what does it point? It points to an appearance at the suit of one or more citizens. But why it should be more incompatible that all the people of a State should be sued by one citizen, than by one hundred thousand, I cannot perceive, the process in both cases being alike, and the consequences of a judgment alike. Nor can I observe any greater inconveniences in the one case than in the other, except what may arise from the feelings of those who may regard a lesser number in an inferior light. But if any reliance be made on this inferiority, as an objection, at least one half of its force is done away by this fact, namely, that it is conceded that a State may appear in this court as plaintiff against a single citizen as defendant; and the truth is that the State of Georgia is at this moment prosecuting an action in this court against two citizens of South Carolina.

The only remnant of objection therefore that remains is, that the State is not bound to appear and answer as a defendant at the suit of an individual This inquiry naturally leads our attention, 1st. To the design of the constitution. 2d. To the letter and express declaration in it.

Prior to the date of the constitution, the people had not any national tribunal to which they could resort for justice; the distribution of justice was then confined to State judicatories, in whose institution and organization the people of the other States had no participation, and over whom they had not the least control. There was then no general court of appellate jurisdiction by whom the errors of State courts, affecting either the nation at large or the citizens of any other State, could be revised and corrected. Each State was obliged to acquiesce in the measure of justice which another State might yield to her or to her citizens; and that even in cases where State considerations were not always favorable to the most exact measure. There was danger that from this source animosities would in time result; and as the transition from animosities to hostilities was frequent in the history of independent States, a common tribunal for

the termination of controversies became desirable, from motives both of justice and of policy.

Prior also to that period the United States had, by taking a place among the nations of the earth, become amenable to the laws of nations, and it was their interest as well as their duty to provide that those laws should be respected and obeyed; in their national character and capacity the United States were responsible to foreign nations for the conduct of each State, relative to the laws of nations, and the performance of treaties; and there the inexpediency of referring all such questions to State courts, and particularly to the courts of delinquent States, became apparent. While all the States were bound to protect each, and the citizens of each, it was highly proper and reasonable that they should be in a capacity not only to cause justice to be done to each, and the citizens of each, but also to cause justice to be done by each, and the citizens of each; and that, not by violence and force, but in a stable, sedate, and regular course of judicial procedure.

These were among the evils against which it was proper for the nation, that is the people of all the United States, to provide by a national judiciary, to be instituted by the whole nation, and to be responsible to the whole nation.

Let us now turn to the constitution. The people therein declare that their design in establishing it comprehended six objects. 1st. To form a more perfect union. 2d. To establish justice. 3d. To insure domestic tranquillity. 4th. To provide for the common defence. 5th. To promote the general welfare. 6th. To secure the blessings of liberty to themselves and their posterity

The question now before us renders it necessary to pay particular attention to that part of the second section which extends the judicial power "to controversies between a State and citizens of another State." It is contended that this ought to be construed to reach none of these controversies, excepting those in which a State may be plaintiff. The ordinary rules for construction will easily decide whether those words are to be understood in that limited sense.

This extension of power is remedial, because it is to settle controversies. It is, therefore, to be construed liberally. It is politic, wise, and good, that not only the controversies in which a State is plaintiff, but also those in which a State is defendant, should be settled; both cases, therefore, are within the reason of the remedy; and ought to be so adjudged, unless the obvious, plain, and literal sense of the words forbid it. If we attend to the words we find them to be express, positive, free from ambiguity, and without room for such implied expressions: "The judicial power of the United States shall extend to controversies between a State and citizens of another State." If the constitution really meant to extend these powers only to those controversies in which a State might be plaintiff, to the exclusion of those in which citizens had demands against a State, it is inconceivable that it should have attempted to convey that meaning in words not only so incompetent, but also repugnant to it; if it meant to exclude a certain class of these controversies, why were they not expressly excepted; on the contrary, not even an intimation of such intention appears in any part of the constitution. It cannot be pretended that where citizens urge and insist upon demands against a State, which the State refuses to admit and comply with, that there is no controversy between them. If it is a controversy between them, then it clearly falls not only within the spirit, but the very words of the constitution. What is it to the cause of justice, and how can it affect the definition of the word controversy, whether the demands which cause the dispute are made by a State against citizens of another State, or by the latter against the former? When power is thus extended to a controversy, it necessarily, as to all judicial purposes, is also extended to those between whom it subsists.

The exception contended for would contradict and do violence to the great and leading principles of a free and equal national government, one of the great objects of which is to insure justice to all. To the few against the many, as well as to the many against the few. It would be strange, indeed, that the joint and equal sovereigns of this country should, in the very constitution by which they professed to establish justice, so far deviate from the plain path of equality and impartiality, as to give to the collective citizens of one State a right of suing individual citizens of another State, and yet deny to those citizens a right of suing them

For the reasons before given, I am clearly of opinion that a State is suable by citizens of another State; but

lest I should be understood in a latitude beyond my meaning, I think it necessary to subjoin this caution, namely, that such suability may nevertheless not extend to all the demands, and to every kind of action, there may be exceptions. For instance, I am far from being prepared to say that an individual may sue a State on bills of credit issued before the constitution was established, and which were issued and received on the faith of the State, and at a time when no ideas or expectations of judicial interposition were entertained or contemplated. . . .

Last Update: 18 August 1999

Site Maintainer: politics@cornell-iowa.edu