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Chief Justice JAY'S opinion, on the question—  
"whether a State be liable to be sued, by a private citizen of another State?"

THE question we are now to decide has been accurately stated, viz. Is a State liable 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.

In order to ascertain the merits of this objection, let us enquire,

1. In what sense Georgia is a sovereign State.

2. Whether suability is incompatible with such sovereignty.

3. Whether the Constitution (to which Georgia is a party) authorises such an action against her.

*Suability and liable* are words not in common use, but they concisely and correctly convey the idea annexed to them.

1. In determining the sense in which Georgia is a sovereign State, it may be useful to turn our attention to the political situation we were in, prior to the Revolution, and to the political Rights which emerged from the Revolution.

All the country now possessed by the United States was then a part of the dominions appertaining to the crown of Great-Britain.

Every acre of land in this country was then held mediately or immediately by grants from that crown.

All the people of this country were then, subjects of the king of Great-Britain, and owed allegiance to him; and all the civil authority then existing or exercised here, flowed from the head of the British empire. They were in a strict sense *feudal* subjects, and in a variety of respects one people. When the revolution commenced, the patriots did not assert that only the same affinity and social connection subsisted between the people of the colonies, which subsisted between the people of Gaul, Britain, and Spain, while Roman provinces, viz. only that affinity and social connection which result from the mere circumstance of being governed by the same prince—different ideas prevailed, and gave occasion to the Congress of 1774 and 1775.

The revolution, or rather the declaration of Independence, found the people *already* united for general purposes, and at the same time providing for their more domestic concerns by State conventions, and other temporary arrangements.

From the crown of Great-Britain, the sovereignty of their country passed to the people of it—and it was then not an uncommon opinion, that the unappropriated lands which belonged to that crown, passed not to the people of the colony or States within whose limits they were situated, but to the whole people—on what ever principles this opinion rested, it did give way to the other, and thirteen sovereignties were considered as emerging from the principles of the revolution, combined with local convenience and considerations—the people nevertheless continued to consider themselves, in a national point of view, as one people; and they continued without interruption to manage their national concerns accordingly—Afterwards, in the hurry of the war, and in the warmth of mutual confidence, they made a confederation of the States—the basis of a general government. Experience disappointed the expectations they had formed from it; and then the people, in their collective and national capacity, established the present Constitution.

It is remarkable that in establishing it, the people exercised their own rights, and their own proper sovereignty, and conscious of the plenitude of it, they declared with becoming dignity, "We the People of the United States, do ordain and establish this Constitution."

Here we see the people acting as sovereigns of the whole country; and in the language of sovereignty, establishing a Constitution by which it was their will, that the state governments should be bound, and to which the State Constitutions should be made to conform.

Every State Constitution is a compact made by and between the citizens of a State to govern themselves in a certain manner—and the Constitution of the United States is likewise a compact made by the people of the United States to govern themselves as to general objects, in a certain manner. By this great compact however, many important prerogatives were transferred to the national government, such as those of making war and peace, contracting alliances, coining money, &c. &c.

If then it be true, that the sovereignty of the nation is in the people of the nation, and the residuary sovereignty of each State in the people of each State, it may be useful to compare these sovereignties with those in Europe, that we may thence be enabled to judge, whether all the prerogatives which are allowed to the latter, are also essential to the former. There is reason to suspect that some of the difficulties which embarrass the present question, rise from inattention to the differences which subsist between them.

It will be sufficient to observe briefly, that

the sovereignties in Europe, and particularly in England, exist on *feudal* principles. That system considers the *prince* as the *sovereign*, and the *people* as his *subjects*—it regards his *person* as the object of allegiance, and excludes the idea of his being on an equal footing with a subject, either in a court of justice or elsewhere. That system contemplates him as being the fountain of honor and authority; and from his grace and grant derives all franchises, immunities and privileges—it is easy to perceive that such a sovereign could not be amenable to a court of justice, or subjected to judicial control and actual constraint. It was of necessity, therefore, that suability became incompatible with such sovereignty. Besides, the prince having all the executive powers, the judgment of the courts would, in fact, be only monitory, not mandatory to him, and a capacity to be advised, is a distinct thing from a capacity to be sued. The same feudal ideas run through all their jurisprudence, and constantly remind us of the distinction between the prince and the subject. No such ideas obtain here—At the revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country—but then they are *sovereigns without subjects* (unless the African slaves among us may be so called)—and have none to govern but *themselves*—the citizens of America are equal as fellow-citizens, and as joint tenants in the sovereignty.

From the differences existing between feudal sovereigns, and governments founded on compacts, it necessarily follows that their respective prerogatives must also differ.

Sovereignty is the right to govern; a nation or state-*sovereign* is the person or persons in whom that resides. In Europe the sovereignty is generally ascribed to the prince—here it rests with the people—there, the sovereignty actually administers the government; here, never in a single instance—our Governors are the agents of the people, and at most stand in the same relation to their sovereign, in which regents in Europe stand to their sovereigns. Their princes have *personal* powers, dignities and pre-eminencies—our rulers have none but *official*; nor do they partake in the sovereignty otherwise, or in any other capacity, than as private citizens.

2. The second object of inquiry now presents itself, viz. whether suability is incompatible with State sovereignty.

Suability—by whom? not a subject—for in this country there are none—not by an inferior; for all the citizens being as to civil rights perfectly equal, there is not, in that respect, one citizen inferior to another.

It is agreed that one free citizen may sue another—the obvious dictates of justice, and the purposes of society demanding it.

It is agreed that one free citizen may sue any number on whom process can be conveniently executed—nay, in certain cases, one citizen may sue forty thousand; for where a corporation is sued, all the members of it are *actually*, though not *personally*, sued.

In this city there are forty odd thousand free citizens, all of whom may be collectively sued by any individual citizen. In the State of Delaware, there are fifty odd thousand free citizens, and what reason can be assigned why a free citizen who has demands against them should not prosecute them? Can the difference between forty odd thousand, and fifty odd thousand make any distinction as to right? Is it not as easy, and as convenient to the public and the parties, to serve a summons on the Governor and Attorney-General of Delaware, as on the Mayor or other officers of the Corporation of Philadelphia?

(To be continued.)

### FROM THE WESTERN STAR.

NO art, however vile—no plan, however wicked—no attempt, however base and unjustifiable, is left untried by a detested and abominated clan, to bring into disrepute the measures of the Federal Government, to fix an odium upon its administration, and endeavor to render our free and happy citizens discontented with its operations.—A Philadelphia paper (the *National Gazette*) has for some time past reemed with abuse and unjust invective against the Executive of the Union.—That herd of scribblers whose ebullitions have been sent forth through the continent, have worn thread-bare the infamous epithets repeated and re-repeated against the officers of the General Government, without producing any of the diabolical effects intended.—It might have been expected that the illustrious WASHINGTON would have escaped the shafts of those traitors to the peace and happiness of our land; not from any regard they entertain for his eminent patriotism, and unparalleled services in his country's cause, but rather from a fear that an open and invidious attack upon the Chief Magistrate of the Union, who lives in the hearts of his fellow-citizens, would give their infamous views a too public exposition, and render abortive the object of their hopes.—But as the great adversary of mankind, after deluding his followers for a season, it is said at length leaves them in a lurch, so his offspring at the present day, after

treading a while with more cautious steps, have in an unguarded moment, thrown publicly the cloven foot—a discovery which, while it will, if possible, draw on them a greater share of contempt than they now receive, will also tend to rivet the MAN OF THE PEOPLE more strongly in the affections of the subjects of our equal, just, and free government.—The PRESIDENT is slandered by these unprincipled emissaries of anarchy, on account of his proclamation for the observance of a neutrality in the present European contest, and for his attachment to, and confidence in, those men whose federalism, and energy of conduct form the strongest barrier to mad misrule.—The proclamation is said to be "a flagrant violation of their rights," and the President's friends are assailed with the old epithet, *aristocracy*.—This brood, who are continually loading the memory of LOUIS XVI. with every execration which hell engendered malice can suggest—who have branded FAYETTE with the vilest appellations—and scandalized some of those illustrious Gallican characters who assisted in fighting the battles of our country, and, in it, have sought a refuge from the fury of *Jacobin* persecution—would now plunge our country into all the horrors of war, in defence of a people who are able to defend themselves, and who will yet undoubtedly recover from the danger into which precipitate measures, and, in some instances, bloody zeal, has plunged them, and establish a free and just government.—These scribblers, too, are continually assailing us with the cry that trade is oppressed, and commerce cramped, by enormous duties;—and although our flourishing commercial situation, and our great and increasing exports, give the lie to their assertions, yet, in order to be consistent, they ought to alledge our *embarrassments* as a strong stimulus to the cultivation of peace—but consistency has not any thing to do with their plans, and justice and honor blush at the mention of their motives.—It is only through the medium of their vehicles of abuse that the *groans of oppression* are heard—while, on the contrary, the people enjoy unlimited prosperity and happiness—and, if they wisely guard themselves against unfounded insinuations respecting men to whom their confidence is due, and continue firm in the support of that government which, under Providence, is the source of their blessings, they may expect a transmission of them, unimpaired, to the latest generation.

### FROM THE SALEM GAZETTE.

A gentleman in Philadelphia writes thus—and it is painful in the extreme that he has occasion to—to his friend in this town:—

"THE President has met a volley of the most unmerited abuse, on account of his Proclamation. It is to be regretted, that the men of virtue, and friends to the government, who are of one opinion in approving that measure, did not more generally declare their sentiments; the address from Salem has done honor to the citizens, and has saved the cause of our country. It is painful to think that any men should be desirous of embroiling this country, and connecting our affairs with those of the governments of Europe, which are evidently hastening to ruin, and laboring under every evil, which vice, despotism and faction can inflict. Tho' we are bound to wish for their happiness, we are under no obligation to become parties to their contentions—we are not to imitate their manners, or to adopt their opinions, if we wish to consult either their or our interests. It would be a lasting disgrace, if not a ruinous calamity, to permit foreign councils to make an impression here. Every man ought to bear testimony against any political connection with any country of Europe. It is our duty to treat all with perfect impartiality and with the strictest justice, and by every means in our power to arrest that enthusiasm, which if indulged will necessarily divide our country into factions. This country, instead of being the most happy, would be the most wretched under heaven, if once engaged in those vindictive and savage wars, which in all probability will ravage Europe during the present age. We enjoy the consolation of believing the wishes of this country to be favorable to peace, order and virtue—it rests with the good men to refrain the passions of the few who are turbulent."

### Foreign Intelligence,

VIENNA, May 20.

SEVERAL Jacobin emissaries are among the Montenegrins, endeavoring to propagate their principles among those mountaineers, and to induce them to make an irruption into the Venetian and Austrian territories.

CADIZ, May 7.

Four ships of the line have lately been ordered to be fitted at Ferrol. This makes the Spanish naval force fit for service about 50 sail of the line.

Upon the French frontiers there are now 130,000 men, inclusive of militia.

The Viviana frigate arrived here this day from Vera Cruz, last from Porto Rico, where they had heard of the war.—She left in the latter place the treasure, which is to be conveyed to Europe by the San Pedro Alcantara. This treasure is reported to be immense.

This very day likewise arrived the San Pedro register ship from Lima. She has on board 1,345,593 hard dollars.

A French prize has come in here that is said to be very rich. She is the Archimides, of Bourdeaux, from the Isle of France, bound to Port L'Orient, and a prize to the Spanish ship of war the San Leandro. By this ship we have heard of the capture of the Spanish register ship St. Jago el Fuelle, or the Achilles, by a French privateer from Havre, and of her recapture by an English Squadron.—She is valued here, with the treasure on board of her, and her cargo, at 2,500,000. She has 2,200,000 dollars on board of her.

Admiral Goodall, after having convoyed the Mediterranean fleet one hundred leagues to the westward of Cape St. Vincents, returned to Gibraltar about a week ago. He came in five days after leaving the fleet, without meeting with any occurrence.

TOURNAY, June 4.

Every thing here remains in much the same state as when I had the pleasure of addressing my last letter to you. We however have heard cannonading again, on the side of Valenciennes, this morning and late last night. An idea seems to have gone through the British camp, that a pretty general salute will be fired from the different cannon round Valenciennes this day, in honor of the King's birth day, and that the bombardment will likewise begin this day. The combined armies seem determined upon expediting the siege of this city and of Conde, as they have, independent of the military, collected labourers to dig trenches and construct batteries, which in point of number would form no inconsiderable army, it being said that there are above 12,000 of them, and reinforcements are daily arriving.

BODENHEIM, May 21.

On the 15th inst. the advanced posts of the French were repulsed from Bliesscastel, by Col. Sockole. Whilst the advanced posts were thus engaged, Mons. Houchard endeavored, with twenty thousand infantry, and a considerable corps of cavalry, to turn Prince Hohenloe's camp near Homburg, and to take possession of the important position of Kayserlantern; but Prince Hohenloe, having received intimation of that intention, quitted Homburg, and returned with the greatest expedition to Kayserlantern, where he arrived only half an hour before the French army, and thus secured that position. The country of Deux Ponts, Homburg, and Carlsberg is consequently again abandoned; and the French, upon taking possession of the several towns deserted by the Prussians, committed great devastations.

LONDON, June 3.

Kellerman, who has been tried and acquitted by the Revolutionary Tribunal, is to command the southern army, in the room of Biron, who retires from indisposition.

A very melancholy circumstance happened on Friday evening at Grenier's Hotel, in Jermyn-street, St. James's.