as here, a suit alleged to be against the state by one of its own citizens. But that case was determined by ascertaining what is a suit against a state. Here the principle is invoked that in no court may a suit be brought against a state without its consent. The decision as to what constitutes a suit against a state is therefore in point as an authority. I shall assume, as contended by the respondents, that this action may not be maintained if it be, in substance, against the state. This proposition does not seem to me in any degree to depend on the allegation of "sovereignty" in a state, in the strict sense of that word. Sovereignty is an indivisible, inherent attribute, incapable of any derogation by law, and doubtless involving an immunity from suits or legal proceedings of any sort. But under the constitution, as originally adopted, a state might be sued by a citizen of another state, (Chisholm v. Georgia, 2 Dall. 419;) and the eleventh article of amendment does not prohibit a suit by a foreign sovereign or state against a state of the Union; and it seems that such a suit might now be maintained. Compare Memoir, etc., of B. R. Curtis, I, 281--284. So, too, it is undoubted that a state may now be sued by another state; and, if it be said that the necessary consent to be sued was involved in the act ratifying the constitution, it may be replied that without the consent of some certain state the eleventh amendment may now be abrogated, and the judicial power of the nation may be restored as it was in the beginning, and still further extended; so that in this respect, as indeed in most, if not all, other respects, the supposed sovereign is in point of fact subject to a power superior to itself, and covering and including its whole territory. It may, however, be taken as the general law of the land that suits by private persons against a state may not be maintained. Into the origin and reason of this rule it is not necessary, for the present purpose, to inquire.

Perhaps the specific question here to be determined is whether this suit be forbidden by the law of Rhode Island, since, if forbidden to the courts of the United States only, by virtue of the eleventh amendment, it might be the proper course to remand it to the supreme court of Rhode Island, rather than to make an order on this demurrer. I do not find that the courts of this state have specially passed on this question, but I think it may be taken to be an assumption which would underlie any decision, should such be required, that such a suit as this is alleged to be cannot be maintained; and so it must be, for this purpose, taken to be the general law, and so of force here, as elsewhere. In Cunningham v. Railroad Co., 109 U. S. 446, 3 Sup. Ct. Rep. 292, 609, the court assumed, "as a point of departure unquestioned" and "conceded in all the cases," that "neither a state nor the United States can be sued as defendant in any court in this country without their consent, except in the limited class of cases in which the state may be made a party in the supreme court of the United States by virtue of the original jurisdiction conferred on that court by the constitution." This statement of principle is, indeed, more than sufficient to decide the case then before the court, since that case,

also, was an action in the United States court against a state by a citizen of another state. Nevertheless, I take it as a sufficient statement of the general law for the purpose of this case.

I come, then, to the question whether the grant in the act of congress of 1890 be a grant to the state, or a grant to the treasurer of the state, or to the college through him as a mere channel of payment. It is worth while to observe that the original grant made in the act of 1862, for the purpose of founding these colleges, was a grant to the state, and the control of the fund, and probably, also, of the colleges established thereby, was committed to the state. This is not denied here; and, while it is by no means decisive, it seems to me at least to suggest that, if the supplementary funds granted in 1890 are to be otherwise administered, there should appear at least an undoubted inference to that effect from the later act of congress. The second act must doubtless be taken to have been passed in view of the particular, as well as the general, provisions of the first act.

Coming, then, to a consideration of the verbal provisions of the act of 1890, I find that it first provides "that there shall be, and hereby is, annually appropriated, * * * to be paid, as hereinafter provided, to each state and territory for the more complete endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts, now established, or which may hereafter be established," in accordance with the act of 1862, certain sums of money to be applied to certain purposes; that "the annual amount to be paid," after 10 years, "to each state and territory, shall be twenty-five thousand dollars;" "that no money shall be paid out under this act to any state or territory for the support and maintenance of a college when a distinction of race or color is made in the admission of students," and that the money appropriated shall in such cases be divided according to a prescribed method. The second section of the act is as follows:

"Sec. 2. That the sums hereby appropriated to the states and territories for the further endowment and support of colleges shall be annually paid on or before the thirty-first day of July of each year, by the secretary of the treasury, upon the warrant of the secretary of the interior, out of the treasury of the United States, to the state or territorial treasurer, or to such officer as shall be designated by the laws of such state or territory to receive the same, who shall, upon the order of the trustees of the college, or the institution for colored students, immediately pay over said sums to the treasurers of the respective colleges or other institutions entitled to receive the same; and such treasurers shall be required to report to the secretary of agriculture and to the secretary of the interior, on or before the first day of September of each year, a detailed statement of the amount so received and of its disbursement. The grants of money authorized by this act are made subject to the legislative assent of the several states and territories for the purpose of said grants: provided, that payments of such installments of the appropriation herein made as shall become due to any state before the adjournment of the regular session of legislature meeting next after the passage of this act shall be made upon the assent of the governor thereof, duly certified to the secretary of the treasury."

The act then goes on to provide that—

"If any portion of the moneys received by the designated officer of the state or territory for the further or more complete endowment, support, and