two or more States, whose jurisdictions, as they respect such lands, shall have been decided or adjusted subsequent to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different States.[1]

So much for the temporary tribunal to be created by the Senate as representing the States. The 11th article of the draft showed that a court of the States was not merely in contemplation but that its creation and jurisdiction were provided for; and it was natural that the permanent court in the minds of the delegates would win upon the temporary tribunal, when they had the whole subject before them; and that, in other words, shortening the processes of history, the permanent court would swallow up the temporary tribunal. The 11th article, in so far as it can be considered material to the present purpose, is as follows:

Sect. 1. The Judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as shall, when necessary, from time to time, be constituted by the Legislature of the United States. . . .

Sect. 3. The Jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the Legislature of the United States; to all cases affecting Ambassadors, other Public Ministers and Consuls; to the trial of impeachments of officers of the United States; to all cases of Admiralty and maritime jurisdiction; to controversies between two or more States (except such as shall regard Territory or Jurisdiction), between a State and Citizens of another State, between Citizens of different States, and between a State or the Citizens thereof and foreign States, citizens or subjects.[2]

Proposal to create permanent and temporary courts for different kinds of cases.

It will be observed that the two drafts, taken together, cover the entire field, that a distinction was made between disputes and controversies respecting jurisdiction or territory and other suits of what would be considered a justiciable kind between the States. Sovereignty was uppermost in their minds, and a temporary tribunal was to be created for suits involving it. Therefore, ordinary cases, that is, cases considered by lawyer and judge to be justiciable, whether they involved States or not, were to be tried and determined by the ordinary permanent tribunal; whereas the extraordinary cases, only gradually being brought within the domain of law, were treated as a different category and according to a different method of procedure. The important point is that they were to be treated.

The drafts were submitted to debate and discussion, and what is apparent to us to-day was fortunately apparent to them. They saw that two bodies were not necessary, and that they could invest the permanent court, which was a Court of the States, with the jurisdiction of the temporary tribunal, which would likewise be a Court of the States. The two institutions were amalgamated, and the permanent court invested with the remainder of the 9th article of the project, thus endowing the Supreme Court with the jurisdiction formerly possessed by the Congress under the 9th of the Articles of Confederation, either in identical language or in language to be traced to that source.

Final report.

On September 12, 1787, the Committee on Style reported the Constitution, in so far as the presented matter is concerned, in the terms with which we are familiar, extending the judicial power 'to Controversies to which the United States shall be a Party;—to Controversies between two or more States'.

[1] Gaillard Hunt, *The Writings of James Madison*, vol. iv, pp. 101–3.

[2] *Ibid.*, pp. 104–5.