

Supreme Court of the United States

The State of Georgia
v.
Brailsford, et al.

August Term, 1792.

This was a bill in equity filed by 'His Excellency Edward Telfair, Esq. governor and commander in chief in and over the state of Georgia, in behalf of the said State, complainant;' against Samuel Brailsford, Robert Wm. Powell, and John Hopton, merchants and co-partners, and James Spalding, surviving partner of Kelsall & Spalding, defendants. The bill set forth the following case: - 'that on the 4th of May, 1782, the State of Georgia being then free, sovereign and independent, enacted a law entitled 'An act for inflicting penalties on, and 'confiscating the estates of, such persons as are therein declared guilty of treason, and for other purposes therein mentioned.' That, among other things, this law contained the following clauses:-'And whereas there are divers estates and other property within this State, belonging to persons who have been declared guilty, or convicted, in one or other of the United States, of offences which have induced a confiscation of their estates or property within the State of which they were citizens: Be it therefore enacted by the authority aforesaid, that all and singular the estates both real and personal, of persons under this description, of whatsoever kind or nature, together with all rights and titles, which they may, do, or shall hold in law or equity, or others in trust for them, and also all the debts, dues and demands, due or owing to British merchants, or others, residing in Great Britain, (which shall be appropriated as herein after mentioned) owing or accruing to them, be confiscated to and for the use and benefit of this State, in like manner and form of forfeiture as they were subjected to in the States of which they respectively were citizens, and the monies arising from the sales which shall take place by virtue, and in pursuance of, this act, to be applied to such uses and purposes, as the legislature shall hereafter direct.'

'And be it further enacted, that all debts, dues and demands, due or owing to merchants or others residing in Great Britain, be, and they are hereby sequestered, and the comissioners appointed under this act, or a majority of them, are hereby empowered to recover, receive, and deposit the same in the

treasury of this State, in the same manner, and under the same regulations, as debts confiscated, there to remain for the use of this State, until otherwise appropriated by this or any future house of Assembly.'

'And whereas there are various persons, subjects of the king of Great Britain, possessed of or entitled to estates real and personal, which justice and found policy require should be applied to the benefit of this State: Be it therefore enacted by the authority aforesaid, That all and singular the estates, real and personal, belonging to persons being British subjects, of whatsoever kind or nature, which they may be possessed of, except as before excepted, or others in trust for them, or that they are or may be entitled to in law or equity, as also all debts, dues, or demands, owing or accruing to them, be confiscated to and for the use and benefit of this State, and the monies arising from the sales which shall take place by viture of, and in pursuance of this act, to be applied to such uses and purposes as the legislature shall hereafter direct.'

'That by the operation of these clauses, all the debts, dues, and demands, of the citizens of Georgia to persons, who had *404 been subjected to the penalties of confiscation in other States, and of British merchants and others residing in Great Britain, and of all other British subjects, were vested in the said State.

'That James Spalding, a citizen of Georgia, and surviving co-partner of Kelsall & Spalding, was indebted to the defendants in the penal sum of 7058. of .5d. upon a bond dated the of 1774, which debt, by virtue of the said recited law, was transferred from the obligees and vested in the State:- Brailsford being a native subject of Great Britain, constantly residing there from the year 1767 'till after the passing of the law; Hopton's estate real and personal, (debts excepted) having been expressly confiscated by an act of the legislature of South Carolina; and Powell coming within the description of persons, whose estates real and personal (debts excepted) were also confiscated by acts of the legislature of South Carolina, if after refusing to take the oath of allegiance, they returned to the State.

'That an action had been brought upon the bond, by Brailsford, Powell and Hopton, against James Spalding, as surviving partner of Kelsall & Spalding, in the circuit court for the district of Georgia, of term, 1791, in which action there was a plea, demurrer to the plea, joinder in demurrer, and judgment

thereupon for the plaintiffs.

'That the State had never relinquished its claim to this debt, but, on the contrary, had asserted it by divers acts of the Legislative, Executive, and Judicial, departments; and, particularly, by directing the Attorney General to apply for a rule, to be admitted to assert the claim, in all suits brought in any court, for debts within the descriptions of the confiscation law above cited.

'That the Attorney General applied to the Circuit court for the admission of the State, as a party, to defend its claim in the said suit of Brailsford and others versus Spalding, then depending there, which application was rejected; and that in that suit, as well as divers other suits, recoveries were had against citizens of the state by British merchants, for debts within the descriptions of the confiscation law, upon the sole principle of debtor and creditor, and without any reference to the right and claim of the state.'

The bill proceeds to charge a confederacy between the parties to the suit in the circuit court to defraud the State; and that in pursuance thereof the plaintiffs had issued execution against the defendant, and the defendant had confederated with them not to take out a writ of error; so that the defendant's property will be levied on, and disposed of, and the State will be defrauded of its just claim thereon.

The bill then suggests the general foundation for the jurisdiction on the equity side of the court;-puts the proper interrogatories; *405 and concludes with praying 'that any levy, or farther levies, under the said execution, and any sales in pursuance of a levy, and any monies already raised, or that may be raised thereon, may be stayed in the hands of the marshall of the said Circuit court, by an injunction from this honorable court. And that the said marshall be directed to pay such sum, or sums, raised as a aforesaid, to the treasurer of the said State of Georgia, to and for the use of the same, and that the said James Spalding be decreed to pay to the said treasurer the balance which may be due on the bond aforesaid for the use aforesaid. And that the said State may be farther or otherwise relieved, in all and singular the premises, as the nature and circumstances of the case shall require, and as to the court shall seem meet.'

With the bill, there was filed an affidavit, made by Mr. John Wreat (the agent for Georgia) affirming 'that the allegations therein contained are true; ' and Dallas, for the State, moved that an injunction might

issue, to the Circuit court, to stay further proceedings, and also to the marshall of the Georgia district, to stay the money in his hands, if he should have levied, or shall levy, the same, on any execution issued in the cause of Brailsford et al. versus Spalding.

The motion was opposed by Randolph, for the defendants; and after argument, the Judges delivered their opinions feriatim, on the 11th of August, 1792.

*405 Johnson, Justice.

In order to support a motion for an injunction, the bill should set forth a case of probable right, and a probable danger that the right would be defeated, without this special interposition of the court. It does not appear to me, that the present bill sufficiently claims such an interposition. If the State has a right to the debt in question, it may be enforced at common law, notwithstanding the judgment of the Circuit court; and there is no suggestion in the bill, though it has been suggested at the bar, that the State is likely to lose her right by the insolvency either of Spalding, the original debtor, or of Brailsford, who will become her debtor for the amount, if he receives it, when in law he ought not to receive, or retain, it.

Nor does the bill state any particular confederacy, or fraud. The refusal to admit the Attorney General as a party on the record, was the act of a competent court; and it is not sufficient barely to alledge, that the defendant has not chosen to sue out a writ of error.

The case might, perhaps, be made better; but as I can only know, at present, the facts which the bill alledges, and which the affidavit supports, it is my opinion, that there is not a proper foundation for issuing an injunction.

Iredell, Justice.

I sat in the Circuit court, when the judgment was rendered in the case of Brailsford and others versus *406 Spalding; but I shall give my opinion, on the present motion, detached from every previous consideration of the merits of the cause.

The debt claimed by the plaintiffs below, was, likewise, claimed by the State of Georgia. The State applied to be admitted to affect her claim, but the application was rejected; nor has any writ of error been instituted upon the judgment. These facts, however, are only mentioned to introduce this remark, that the Circuit court could not, with

propriety, sustain the application of Georgia; because, whenever a State is a party, the Supreme court has exclusive jurisdiction of the suit; and her right cannot be effectually supported, by a voluntary appearance, before any other tribunal of the Union. Not being a party, nor capable of resorting as a party, to the Circuit court, it is very much to be questioned whether the State could bring a writ of error on the judgment there, even if her claim appeared on the record.

Every principle of law, justice, and honor, however, seem to require, that the claim of the State of Georgia should not be, indirectly, decided, or defeated, by a judgment pronounced between parties, over whom she had no control, and upon a trial, in which she was not allowed to be heard. If, indeed, the court could not devise a mode, for admitting a fair investigation and determination upon that claim, it would be useless to grant an injunction: But I think a mode may easily be prescribed, in strict conformity with the practice and principles of equity.

It was in the power of the defendant in the Circuit court, to have filed a bill of interpleader, in order, for his own safety, to settle the rights of the contending parties; but neither in that form, nor by instituting a suit herself, could Georgia have derived the benefit of supporting her claim in her own way, before any other than the Supreme court. In this court, therefore, we ought now to place the State upon the same footing, as if a bill of interpleader had been regularly filed here; which can be done by sustaining the present suit; and when the parties are all before us, we may direct a proper issue to be formed, and tried at the bar. Thus, justice will be done to Georgia, and an irreparable injury may be prevented; while the adverse party, even if he ultimately succeeds, can only complain of a short delay.

With this view, I think, that an injunction should be awarded to stay the money in the hands of the marshal, till this court shall make a further order on the subject.

Blair, Justice.

The State of Georgia seems to have done all that she could to obtain a hearing. An application was made to the Circuit court, in the nature of a claim to interplead; but being refused, her alternative, under all the circumstances of the case, is an appeal to the equitable jurisdiction of the Supreme *407 court. It is true, perhaps, as the counsel has suggested, that the

defendant below pleaded the confiscation act of Georgia in bar to the action; but it is a sufficient answer to this argument, that the State was not a party; and no right can be defeated, in law, unless the party claiming it, has himself an opportunity to support it.

If the State of Georgia was entitled to the bond, she is equally entitled to the money levied by the marshal in satisfaction of the bond, or rather of the judgment rendered upon it: And as the execution directs the marshal to pay the amount to the plaintiffs below, I can perceive no other mode of preventing a compliance, while we enquire into the right of receiving the money, than that of issuing an injunction to stay it in the hands of the officer.

It appears to me to be too early, likewise, to pronounce an opinion upon the titles in collision; since it is enough, on a motion of this kind, to show a colorable title. The State of Georgia has set up her confiscation act, which certainly is a fair foundation for future judicial investigation; and that an injury may not be done, which it may be out of our power to repair, the injunction ought, I think, to issue, till we are enabled, by a full enquiry, to decide upon the whole merits of the case.

Wilson, Justice.

I confess, that I have not been able to form an opinion which is perfectly satisfactory to my own mind, upon the points that have been discussed. If Georgia has a right to the bond, it is strictly a legal right; but to enforce a strictly legal right, the present seems, at the first blush, to be an awkward and irregular proceeding. Again: Georgia had not a right, or she had a right, to be admitted to a hearing in the Circuit court: but, in the former case, it would be no ground of complaint, that her application was rejected; for, she is bound by the law; and in the other case, she would be entitled to bring the subject before us, as a court of law; since she was refused the exercise of a legal right.

It is true, that, under the Federal Constitution, an inferior tribunal cannot compel a State to appear as a party; but it is a very different proposition to say, that a State cannot, by her own consent, appear in any other court, than the Supreme court. The general rule applies among all sovereigns, who, as equals, are not amenable to courts of each other; and yet I remember an action was instituted and sustained, some years ago, in the name of Louis XVI. king of France, against Mr. Robert Morris, in the Supreme court of

Pennsylvania.

Under these impressions, I am disposed to think, that the State of Georgia ought rather to have sued out a writ of error, than to have asked for an injunction: But still, in the existing *408 circumstances of the case, I have no objection to retain the money within the power of the court, 'till we can better satisfy ourselves both as to the remedy and the right.

Cushing, Justice.

The Judicial act expressly declares, that 'suits in equity shall not be sustained, in either of the courts of the United States, in any case where plain, adequate, and complete remedy may be had at law.' Now, if Georgia has any right to the debt in question, it is a right at law, for which, of course, the law will furnish a plain, adequate, and complete remedy. The decision of the Circuit court, in a case to which Georgia was neither party nor privy, did not, and could not, take away either the right or the remedy of the State. Nor can Spalding, the defendant below, be made liable twice, for the same debt, without his wilful laches. For, it is in his power to bring a writ of error; and then the whole merits of the claim of Georgia appearing on the record, we must decide it as a question of law, either by affirming or reversing the judgment, so as to bind us in any suit, which Georgia might institute for the same cause.

Besides, the State of Georgia (notwithstanding the judgment of the Circuit court) may bring an action of indebitatus assumpsit against Brailsford (who is a man of fortune), after they have received the money, upon the principle of Mofes versus McFarland, and with stronger reason; as in that case the parties, in both courts, were the same; but, in the case proposed, they would be different, and one of them has never been heard. In some form, therefore, Georgia may obtain compleat redress at law.

I do not, upon the whole, consider the refusal of Spalding to bring a writ of error (which he is not compellable to bring) nor any other suggestion in the bill, as a sufficient foundation for exercising the equitable jurisdiction of the court; and, consequently, I think that an injunction ought not to be awarded.

Jay, Chief Justice.

My first ideas were unfavorable to the motion; but many reasons have been urged, which operate forcibly to produce a change of opinion.

The great question turns on the property of a certain bond; whether it belongs to Brailsford, or to Georgia? It is put in suit by Brailsford; but if Georgia, by virtue of the confiscation act, is really entitled to the debt, she is entitled to the money, though the evidence of the debt happened to be in the possession of Brailsford, and though Brailsford has, by that means, obtained a judgment for the amount.

Then the only point to be considered is whether, under these circumstances, it is not equitable to stay the money in the *409 hands of the marshall, 'till the right to it is fairly decided; and so avoid the risque of putting the true owner to a suit, for the purpose of recovering it back?

For my part, I think that the money should remain in the custody of the law, till the law has adjudged to whom it belongs; and, therefore, I am content, that the injunction issue.

An Injunction granted. [\[FN*\]](#)

[FN*](#) See the same case, post. & 3 vol. p. 1. as well on a motion to dissolve the Injunction, as on a trial of the merits, upon a seigned issue.

Hayburn's Case.

This was a motion for a mandamus to be directed to the Circuit Court for the district of Pennsylvania, commanding the said court to proceed in a certain petition of Wm. Hayburn, who had applied to be put on the pension list of the United States, as an invalid pensioner.

The principal case arose upon the act of Congress passed the 23rd of March, 1792.

The Attorney General (Randolph) who made the motion for the mandamus, having premised that it was done ex officio, without an application from any particular person, but with a view to procure the execution of an act of Congress, particularly interesting to a meritorious and unfortunate class of citizens, the Court declared that they entertained great doubt upon his right, under such circumstances, and in a case of this kind, to proceed, ex officio; and directed him to state the principles on which he attempted to support the right. The Attorney General, accordingly, entered into an elaborate description of the powers and duties of his office:

But the Court being divided in opinion on that question, the motion, made ex officio, was not allowed.

The Attorney General then changed the ground of his interposition, declaring it to be at the instance, and on behalf of Hayburn, a party interested; and he entered into the merits of the case, upon the act of Congress, and the refusal of the Judges to carry it into effect.

The Court observed, that they would hold the motion under advisement, until the next term; but no decision was ever pronounced, as the Legislature, at an intermediate *410 session; provided, in another way, for the relief of the pensioners. [\[FN*\]](#)

[\[FN*\]](#) See an act passed the 28th Feb. 1793. As the reasons assigned by the Judges, for declining to execute the first act of Congress, involve a great Constitutional question, it will not be thought improper to subjoin them, in illustration of Hayburn's case.

The Circuit court for the district of New York (consisting of Jay, Chief Justice, Cushing, Justice, and Duane, District Judge) proceeded on the 5th of April, 1791, to take into consideration the act of Congress entitled 'An act to provide for the settlement of the claims of widows, and orphans barred by the limitations heretofore established, and to regulate the claims to invalid pensions;' and were, thereupon, unanimously, of opinion and agreed.

'That by the Constitution of the United States, the government thereof is divided into three distinct and independent branches, and that it is the duty of each to abstain from, and to oppose, encroachments on either.'

'That neither the Legislative nor the Executive branches, can constitutionally assign to the Judicial any duties, but such as are properly judicial, and to be performed in a judicial manner.'

'That the duties assigned to the Circuit courts, by this act, are not of that description, and that the act itself does not appear to contemplate them as such; in as much as it subjects the decisions of these courts, made pursuant to those duties, first to the consideration and suspension of the

Secretary at War, and then to the revision of the Legislature; whereas by the Constitution, neither the Secretary at War, nor any other Executive officer, nor even the Legislature, are authorized to sit as a court of errors on the judicial acts or opinions of this court.'

'As, therefore, the business assigned to this court, by the act, is not judicial, nor directed to be performed judicially, the act can only be considered as appointing commissioners for the purposes mentioned in it, by official instead of personal descriptions.'

'That the Judges of this court regard themselves as being the commissioners designated by the act, and therefore as being at liberty to accept or decline that office.'

'That as the objects of this act are exceedingly benevolent, and do real honor to the humanity and justice of Congress; and as the Judges desire to manifest, on all proper occasions, and in every proper manner, their high respect for the National Legislature, they will execute this act in the capacity of commissioners.'

'That as the Legislature have a right to extend the session of this court for any term, which they may think proper by law to assign, the term of five days, as directed by this act, ought to be punctually observed.'

'That the Judges of this court will, as usual, during the session thereof, adjourn the court from day to day, or other short periods, as circumstances may render proper, and that they will, regularly, between the adjournments, proceed as commissioners to execute the business of this act in the same court room, or chamber.'

*411 The Circuit court for the district of Pennsylvania, (consisting of Wilson, and Blair, Justices, and Peters, District Judge) made the following representation, in a letter jointly addressed to the President of the United States, on the 18th of April, 1792.

'To you it officially belongs to 'take care that the laws' of the United States 'to faithfully executed.' Before you, therefore, we think it our duty to lay the sentiments, which, on a late painful occasion, governed us with regard to an act passed by the legislature of the union.'

'The people of the United States have vested in Congress all legislative powers 'granted in the

constitution.'

'They have vested in one Supreme court, and in such inferior courts as the Congress shall establish, 'the judicial power of the United States.'

'It is worthy of remark, that in Congress the whole legislative power of the United States is not vested. An important part of that power was exercised by the people themselves, when they 'ordained and established the Constitution.'

'This Constitution is 'the Supreme Law of the Land.' This supreme law 'all judicial officers of the United States are bound, by oath or affirmation, to support.'

'It is a principle important to freedom, that in government, the judicial should be distinct from, and independent of, the legislative department. To this important principle the people of the United States, in forming their Constitution, have manifested the highest regard.' 'They have placed their judicial power not in Congress, but in 'courts.' They have ordained that the 'Judges of those courts shall hold their offices during good behavior,' and that 'during their continuance in office, their salaries shall not be diminished.'

'Congress have lately passed an act, to regulate, among other things, 'the claims to invalid pensions.' 'Upon due consideration, we have been unanimously of opinion, that, under this act, the Circuit court held for the Pennsylvania district could not proceed;

'1st. Because the business directed by this act is not of a judicial nature. It forms no part of the power vested by the Constitution in the courts of the United States; the Circuit court must, consequently, have proceeded without constitutional authority.' '2nd. Because, if, upon that business, the court had proceeded, its judgments (for its opinions are its judgments) might, under the same act, have been revised and controuled by the legislature, and by an officer in the executive department. Such revision and controul we deemed radically inconsistent with the independence of that judicial power which is vested in the courts; and, consequently, with that important principle which is so strictly observed by the Constitution of the United States.'

'These, Sir, are the reasons of our conduct. Be assured that, though it became necessary, it was far from being pleasant. To be obliged to act contrary, either to the obvious directions of Congress, or to a constitutional principle, in our judgment equally

obvious, excited feelings in us, which we hope never to experience again.'

The Circuit court for the district of North Carolina, (consisting of Iredell, Justice, and Sitgreaves, District Judge) made the following representation in a letter jointly addressed to the President of the United States, on the 8th of June, 1792.

'We, the judges now attending at the Circuit court of the United States for the district of North Carolina, conceive it our duty to lay before you some important observations which have occurred to us in the consideration of an act of Congress lately passed, entitled 'an act to provide for the settlement of the claims of widows and orphans barred by the limitations heretofore established, and to regulate the claims to invalid pensions.'

'We beg leave to premise, that it is as much our inclination, as it is our duty, to receive with all possible respect every act of the Legislature, and that we never can find ourselves in a more painful situation than to be obliged to object to the execution of any, more especially to the execution of one founded on the purest principles of humanity and justice, which the act in question undoubtedly is. But, however, lamentable a difference in opinion really may be, or with whatever difficulty we may have formed an opinion, we are under the indispensable necessity of acting according to the best dictates of our own judgment, after duly weighing every consideration that can occur to us; which we have done on the present occasion.'

'The extreme importance of the case, and our desire of being explicit beyond the danger of being misunderstood, will, we hope, justify us in stating our observations in a systematic manner. We therefore, Sir, submit to you the following:'

'1. That the Legislative, Executive, and Judicial departments, are each formed in a separate and independent manner; and that the ultimate basis of each is the Constitution only, within the limits of which each department can alone justify any act of authority.'

'2. That the Legislature, among other important powers, unquestionably possess that of establishing courts in such a manner as to their wisdom shall appear best, limited by the terms of the constitution only; and to whatever extent that power may be exercised, or however severe the duty they may think proper to require, the Judges, when appointed in

virtue of any such establishment, owe implicit and unreserved obedience to it.'

'3. That at the same time such courts cannot be warranted, as we conceive, by virtue of that part of the Constitution delegating Judicial power, for the exercise of which any act of the legislature is provided, in exercising (even under the authority of another act) *413 any power not in its nature judicial, or, if judicial, not provided for upon the terms the Constitution requires.'

'4. That whatever doubt may be suggested, whether the power in question is properly of a judicial nature, yet inasmuch as the decision of the court is not made final, but may be at least suspended in its operation by the Secretary at War, if he shall have cause to suspect imposition or mistake; this subjects the decision of the court to a mode of revision which we consider to be unwarranted by the Constitution; for, though Congress may certainly establish, in instances not yet provided for, courts of appellate jurisdiction, yet such courts must consist of judges appointed in the manner the Constitution requires, and holding their offices by no other tenure than that of their good behaviour, by which tenure the office of Secretary at War is not held. And we beg leave to add, with all due deference, that no decision of any court of the United States can, under any circumstances, in our opinion, agreeable to the Constitution, be liable to a reversion, or even suspension, by the Legislature itself, in whom no judicial power of any kind appears to be vested, but the important one relative to impeachments.'

'These, sir, are our reasons for being of opinion, as we are at present, that this Circuit court cannot be justified in the execution of that part of the act, which requires it to examine and report an opinion on the unfortunate cases of officers and soldiers disabled in the service of the United States. The part of the act requiring the court to sit five days, for the purpose of receiving applications from such persons, we shall deem it our duty to comply with; for, whether in our opinion such purpose can or cannot be answered, it is, as we conceive, our indispensable duty to keep open any court of which we have the honor to be judges, as long as Congress shall direct.'

'The high respect we entertain for the Legislature, our feelings as men for persons, whose situation requires the earliest, as well as the most effectual relief, and our sincere desire to promote, whether officially or otherwise, the just and benevolent views of Congress, so conspicuous on the present as well as

on many other occasions, have induced us to reflect, whether we could be justified in acting, under this act, personally in the character of commissioners during the session of a court; and could we be satisfied that we had authority to do so, we would cheerfully devote such part of our time as might be necessary for the performance of the service. But we confess we have great doubts on this head. The power appears to be given to the court only, and not to the Judges of it; and as the Secretary at War has not a discretion in all instances, but only in those where he has cause to suspect imposition or mistake, to with-hold a person recommended by the court from being named on the pension list, it would be necessary for us to be well persuaded we possessed such an authority, before we exercised a power, which might be a means of drawing money out of the public treasury as effectually as an express appropriation by law. We do not mean, however, to preclude ourselves from a very deliberate *414 consideration, whether we can be warranted in executing the purposes of the act in that manner, in case an application should be made.'

'No application has yet been made to the court, or to ourselves individually, and therefore we have had some doubts as to the propriety of giving an opinion in a case which has not yet come regularly and judicially before us. None can be more sensible than we are of the necessity of judges being in general extremely cautious in not intimating an opinion in any case extra-judicially because we well know how liable the best minds are, notwithstanding their utmost care, to a bias, which may arise from a pre-conceived opinion, even unguardedly, much more deliberately, given: But in the present instance, as many unfortunate and meritorious individuals, whom Congress have justly thought proper objects of immediate relief, may suffer great distress even by a short delay, and may be utterly ruined by a long one, we determined at all events to make our sentiments known as early as possible, considering this as a case which must be deemed an exception to the general rule, upon every principle of humanity and justice; resolving however, that so far as we are concerned individually, in case an application should be made, we will most attentively hear it; and if we can be convinced this opinion is a wrong one, we shall not hesitate to act accordingly, being as far from the weakness of supposing that there is any reproach in having committed an error, to which the greatest and best men are sometimes liable, as we should be from so low a sense of duty, as to think it would not be the highest and most deserved reproach that could be bestowed on any men (much more on Judges) that

they were capable, from any motive, of persevering against conviction, in apparently maintaining an opinion, which they really thought to be erroneous.'

Rule.

The Attorney General having moved for information, relative to the system of practice by which the Attornies and Counsellors of this court shall regulate themselves, and of the place in which rules in causes here depending shall be obtained, the Chief Justice, at a subsequent day, stated, that--

The Court considers the practice of the courts of King's Bench and Chancery in England, as affording outlines for the practice of this court; and that they will, from time to time, make such alterations therein, as circumstances may render necessary.