*Rule.

The Attorney-General having moved for information, relative to the system of practice by which the attorneys 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.

---

*FEBRUARY TERM, 1793. [*415

Oswald, administrator, *v.* State of New York.

Practice.

Proclamation was made in this cause, "that any person having authority to appear for the State of New York is required to appear accordingly;" and no person appearing it was ordered, on motion of *Coxe*, for the plaintiff—

By the Court.—Unless the state appears by the first day of next term to the above suit, or show cause to the contrary, judgment will be entered by default against the state.(*a*)

---

selves from a very deliberate 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 preconceived 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 so 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 we 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."[1]

(*a*) See *ante*, p. 401; and also Chisholm, executor, *v.* Georgia, *post*, p. 419; Cutting, administrator, *v.* South Carolina, and Grayson *v.* Virginia, 3 Dall. 320.

[1] See United States v. Todd, in which the supreme court decided, on the 17th February 1794, that the judges could not act as commissioners, under the statute in question. 13 How. 52, note.