

It is, however, clear, that although a bill of exchange may be made payable at any length of time after sight, yet if it be not accepted, suit may be brought against the drawer and endorser before the day of payment arrives; and the drawer may, on being notified of the non-acceptance, proceed forthwith by suit against the drawee to recover his effects out of his hands, upon which the bill was drawn. It is, therefore, perfectly manifest that the drawing of the bill could not have, in any way, prevented Hepburn from collecting his debt from the Mollisons. It may be admitted, that he was excusable in not proceeding against them until he heard the fate of his bill; but certainly after being notified of its non-acceptance, further indulgence could not have been expected by the Mollisons themselves. And the further delay of the executor cannot but be considered as a great neglect of the interests of the creditors and next of kin of his testator. So far, therefore, from this transaction of the bill of exchange furnishing any reasonable apology for that delay of about thirteen years, the executor can be relieved from the imputation of gross negligence in no other way than by shewing, what I believe to be the truth, that he actually did receive payment, as stated by himself, on the 12th of January, 1779, of £260, and obtained assignments for the balance sometime in or before the year 1790.

\* Upon the first branch of the case I am of opinion that there is sufficient evidence to shew that this debt, once due **109** to the estate of the late John Hepburn, has been long since paid and satisfied by the Mollisons themselves. And I might here safely rest the case; but a sense of duty to the State, and a respect for the apparent sincerity and zeal with which the claim has been pressed by the petitioner, induce me to proceed with the investigation in relation to its being barred by the statutory provision, by which it is said to be embraced, and by the presumption of satisfaction arising from the great lapse of time.

These terms of opposition are founded on the supposition that there is no direct proof that the debt has been fully paid. And in proceeding upon that supposition, one of three positions must be taken; first, that no partial payment has been made, in which case the presumption of payment must begin to run from the first of April, 1776, when the whole debt became due; or secondly, that there has been a part payment made of £260, which being in itself an acknowledgment of the debt on the 12th of January, 1779, when it was made, the estimate of the presumption must commence from that day; but if, in the last place, as has been urged, the entry as to the £260 must not be considered as a payment, then there being no payment but that of the assignments in the year 1790, the presumption of satisfaction can only rest on the lapse of time since that period.