

for goods directed to be delivered to him, was upon one occasion read in evidence against the principal, but that decision was subsequently condemned, and may, as the Court of Appeals say, in 11 *G. & J.*, 34, 35, be considered as overruled. And if a receipt given by an agent may not be read against his principal, it is difficult to understand upon what principle, a series of entries in the books of an agent, running over a long lapse of time, can be used against him, without any attempt to show the period or the circumstances under which the entries were made.

Being, for these reasons, of the opinion, that the books, if produced, could not be evidence, the application must be refused.

The defendant's application is, that the complainants shall be compelled to elect, whether they will proceed in this court, or in the court of law.

The practice of compelling the plaintiff to elect, when he is suing at law and in equity at the same time, for the same matter, is said to have originated in an order of Lord Bacon, according to which, double vexation is not admitted, and if the party sue for the same cause at common law and in chancery, he is to have a day given him to make his election, where he will proceed, and in default of such election, to be dismissed. 18 *order Bearn's orders.*

The reason of the rule, as stated in the books, is, that it would be inconsistent with the ends of justice to permit a party to proceed in this court and at law, at the same time, for the same demand; for the jury may find a verdict one way and the Master make a report a different way, which would occasion such a clashing of jurisdiction as could never be endured. See *Livingston vs Kaine*, 3 *Johns. Chan. Rep.*, 224.

The party when put to his election will be allowed a reasonable time to determine in which court he will proceed, and this reasonable time seems now to be eight days.

2 *Daniel's Ch. Pr.*, 961, note. *Rogers vs Vosburgh*, 4 *Johns. Ch. Rep.*, 84.

By the terms of the order, the plaintiff and his solicitor, having notice thereof, shall within eight days after such notice make his election in which court he will proceed; and if he