

surer of the state, and sundry others said to be the debtors of the *Mollisons*, who had paid money into the treasury. None of the defendants answered, and the bill was dismissed by the complainant's solicitor in open court on the 6th of December, 1821. And finally, that the present petitioner *John M. Hepburn* was, on the 30th of January, 1826, appointed administrator *de bonis non* of the late *John Hepburn*, by the Orphans Court of Washington county, in the District of Columbia, by virtue of which he has been invested with a capacity to sue in this state. (p)

By an order of the House of Delegates, passed on the 18th of December, 1823, this case was referred to the Auditor General; and he, taking the entries and vouchers as they stood, according to their dates and natural import, stated an account by which it appears, that, charging the *Mollisons* with the whole debt due as of the first of April, 1776, amounting then to £316 sterling, or \$1,404 44 of our money, principal, and giving them credit for a payment of £260, or \$1,155 56, as of the 12th of January, 1779, and then giving them a further credit for \$840 71, the amount of the assignments as of the year 1790, calculating interest both for and against, the estate of the late *John Hepburn* had been overpaid \$7 92. This at first blush seemed to be the plain and natural result of the whole affair.

But it has been urged, that the late *Samuel C. Hepburn* drew a bill of exchange upon the *Mollisons* on the 15th of March, 1776, for just the amount of £260, and that the payment of £260 was in truth no more than a credit for the proceeds of the bill of exchange. The whole controversy turns upon this point; whether the bill of the 15th of March, 1776, and the payment, as stated, of the 12th of January, 1779, are identical. This assertion, that the bill and the entry are the same, places them in direct contradiction to each other. The bill is too explicit, and too well fortified to be impugned in any single particular; and therefore, all the efforts of the petitioner have been directed against the entry to make it conform to the bill; and thus the matter in dispute is still further reduced to the single point as to the truth or falsehood of the entry of the 12th of January, 1779.

That entry, as it stands, purports to be an admission of the receipt by *Samuel C. Hepburn* of £260, as a payment from the *Mollisons*, in part of a pre-existing debt due from them. It makes