

ferred to exhibit proof of facts; and then to prove in any way, that the proof so exhibited by himself is false. In this instance, the petitioner does not merely deduce principles of law from the testimony he exhibits; but the entry of the 12th of January, 1779, is exhibited as a part of his proof, and proves the simple fact of payment; and then he produces circumstantial evidence to shew, that the entry is untrue; that there was no payment at that time; nor indeed any payment at all; but a mere credit for the proceeds of a bill of exchange sold in 1776. This latter proof is utterly incompatible with the first; the one or the other must be false. The entry is, however, a material part of the petitioner's own proof; he cannot, therefore, be allowed thus to impeach and falsify his own testimony. (a)

But the petitioner blends all the transactions in relation to the bill of exchange, with the accounts of *Samuel C. Hepburn*, as executor, and thus attempts not only to falsify an entry in his hand-writing, to shew that no such payment, as there stated, was in fact made; but he also uses the bill of exchange to swell the debt said to be due from the *Mollisons*; and so to increase the demand against the state.

The holders of the bill instituted suit upon it against *Thomas* the endorser, and recovered, according to the act for ascertaining what damages shall be allowed on protested bills of exchange; (b) over and above the principal, with costs of protest and suit, twenty per cent. damages. *Samuel C. Hepburn* being liable, as drawer, for the whole, he accordingly paid the whole amount. And now the petitioner contends, that those damages and costs must be considered as a part of his claim against the *Mollisons* and the state. But I know of no rule of law by which the *drawee* who refuses to accept a bill, even where he has funds in his hands at the time, can be charged with the damages and costs of protest. And if the *Mollisons* cannot be so charged, then there certainly can be no claim, on that account, against the state, who stands in the place of the *Mollisons* only, even supposing those damages and costs of protest to have been actually paid out of the estate of the late *John Hepburn*. Upon *Samuel C. Hepburn's* receiving notice of the non-acceptance of the bill, his right to sue, which by drawing it, he might be said to have tacitly consented thus far to suspend,

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(a) *Fenton v. Hughes*, 7 Ves. 290; *Purcell v. McNamara*, 8 Ves. 327; 1 *Brown Civil Law*, 478; *Queen v. The State*, 5 H. & J. 232.—(b) 1715, ch. 7; 1785, ch. 38.