

was completely restored; and the express object of giving him notice was to enable him at once to collect his debt, or to draw his effects out of the hands of the *Mollisons*; which, at the time he received the notice, amounted to \$1,404 44, with interest from the first of April, 1776, when the whole debt became due.

Not satisfied with pressing the transaction of the bill of exchange for the purpose of adding to the amount of the demand against the *Mollisons* and the state, the petitioner attempts to use it as a means of accounting for the long standing of his claim, for more than half a century. The debt became due on the first of April, 1776, and the *Mollisons* might have been then, or at any time after that, sued for it, in England where they resided, or their effects might have been attached here. But it is urged, that between the years 1779 and 1789, the executor had no claim against the *Mollisons*, he having lost it by the sale of the bill of exchange, and it only having been revived in him by his *payment* of that bill; or in other words, that the drawing of the bill suspended his right to sue until after its being protested he had paid the whole amount on the 16th of June, 1789; and thus the lapse of the first thirteen years is happily, though singularly accounted for.

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.