

## HEPBURN'S CASE.

Where jurisdiction in a particular case is conferred on the Chancellor by a special act, he follows the authority exactly as given. All our governments are mere delegations of power for the benefit of a sovereign people. No unlimited discretionary power can be conferred on the judiciary by the Legislature. By virtue of the power of *eminent domain*, private property may be taken for public uses; but private property cannot be taken from one and given to another in any way. The state may, as against itself admit the truth of any fact, or waive the benefit of any rule of law. The Legislature may by law, remove difficulties, or grant facilities, as between individuals, without prejudice to private rights.

Before the revolution there was a *legal* money of six shillings to the dollar, and a *current* money of seven shillings and six-pence to the dollar; but the accounts of executors and administrators were always adjusted in *legal* money. No one can be allowed to discredit his own testimony.

The lapse of years cannot fail to give rise to an unanswerable presumption against the validity of an antiquated claim of any kind. The statute of limitations must be pleaded or specially relied on; but a presumption of satisfaction, arising from lapse of time, may, without putting it as a defence upon the record, be taken advantage of at the hearing. Lapse of time is a defence available against the state; and may well be taken advantage of by it. A presumption of satisfaction rests on two facts; first, that the creditor had a remedy; and secondly, that the debtor himself was, or had property within reach of that remedy.

The debts of a debtor were formerly, as a matter of grace, always paid out of his forfeited or escheated estate. The revolutionary confiscation acts gave to the creditors of alien enemies, remedies as effectual as those taken away; and removed no property beyond the reach of such creditors. The object of the judicial proceeding by attachment is to enable a creditor to obtain satisfaction from his absent debtor's property found here. Although a non-resident alien enemy cannot sue; yet a citizen creditor may, by attachment, obtain satisfaction from the property found here of such alien debtor. The nature and principles of the revolutionary confiscation acts considered and applied.

*John M. Hepburn* presented a petition to the General Assembly by which he claimed from the state a large sum of money as administrator *de bonis non* of *John Hepburn*, deceased, who was a creditor of *William* and *Robert Mollison*, whose property had been confiscated, leaving the claim of the petitioner, as he alleges, unsatisfied. Upon which the following resolution was passed:

*Resolved*, That the Chancellor of Maryland be, and he hereby is authorized and directed to examine into the merits of the claim of *John Hepburn*, as creditor of *William* and *Robert Mollison*, against the *State of Maryland*, and to decide thereon according to the equity and right of the matter, which decision shall be conclusive in the premises; and if the Chancellor shall find any sum to be due, the same shall be satisfied out of the funds arising from the confiscation and sale of the property of the said *William* and