

to give secondary evidence of the contents could afterwards produce it. I thought, at the trial, that he could not; considering it to be the rule that, where he had the opportunity, and had declined to produce the writing he could not afterwards bring forward its contents. Our opinion is, that that is the rule of practice; and that, when that refusal has taken place the party who had refused to produce the writing could not afterwards be at liberty to give it in evidence."

That is exactly what Mr. Carter said he intended to do, and what he wished to do. In *Collins v. Gashon*, 2 F. & F. 47, Byles, J., in a similar case said: "I cannot now permit the letter to be read. You made your election in the first instance when you refused to produce it, and I hold that the time for its production has passed. You have no right to use it for any purpose."

It seems clear that if the original cannot be produced or used after its production has been refused, evidence of its contents could not.

This appeal must be dismissed with costs.

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