The agreement to that effect upon receiving a conveyance of the property agreed to be taken in satisfaction of their claim had actually released and exonerated Mr. Calvert fully and finally therefrom.

This final and final settlement of the claim of Mr. Carter upon her father's estate upon rights under the paternal succession was consummated by the deed of the 12th of November 1836 in which all the necessary parties united and sealed that day down to the date of the Arbitrators' Award in the 27th July 1846 no one ever thought to question and not again be agitated. He and Mr. Carter had been in the actual possession of the property thus conveyed in satisfaction of his claim for a period anterior to the Deed continued in possession thereof and Mr. Carter is now in possession thereof, claiming all thereto, in virtue of rights conferred by that Deed. No complaint has ever to this day been heard and the parties father and daughter and those who had succeeded them, remained under the impression, as well they might that this transaction was final forever.

There is a reason of great force, as appears to me why Mr. Carter should not have thought to open a question which had been closed in the life time of his wife, who died in the year 1845 and who certainly died under the impression that, fulfilled at least would never be disturbed. Mrs. Carter had by her Will executed the power conferred upon her by the Deed of the 12th of November 1836 and had in pursuance of said power given her husband, a life estate in the property embraced in said Deed with remainder in fee to her children with power to the father to make such distribution among her children as he might think fit. Now it appears to me, it would have been unusually injudicious and to say improper in Mr. Carter to do any act which could possibly in any of its consequences, affect the title of his wife to the property thus disposed of by her. This supposed that the Arbitrators Messrs. Ewing and Bradley had ascertained that nothing was due Mrs. Carter on account of the paternal succession, or as much as due for the deceased Mr. Calvert in that account than he had paid in money. Would not such an award have been calculated to shake the title conveyed by the deed of November 1836 or at events would it not so far as Mr. Carter is concerned have thrown doubts upon his title, as resulting from that deed. The reference of this question to the final award would impair the rights of the children of Mrs. Carter who were strangers and no parties to the transaction. It certainly seems to me by no means a clear proposition that if Mr. Carter had agreed to open the settlement and that the Arbitrators should re examine the question and they had come to the conclusion, that no consideration was given for a deed that his rights under it, as derived from the will of his wife would not have been affected,

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Certainly it is to be presumed Mr. Carter would have felt much reluctance to submit to the contingency of a new arbitration upon a subject which had been thus solemnly settled in the life time of his wife in the confidence of the final character of which she had made her will and had gone to her grave,

There is moreover another reason, which in my judgment is much consideration in determining the intention of the parties to this reference,

Mr. Calvert the elder died early in the year 1838 and on the 11th of November 1837 he executed to his sons George Hanna Charles W. Calvert a deed of his real and personal estate in trust to pay over to the parties, the sum due from them to them on account of their maternal grandfather and also to pay to his said sons and to his daughters the sums which would be due them upon his death and which he had received from their maternal grandmother. This deed was of course executed by the grantor, and received by the grantees under the impression that the paternal succession of the daughters had already been accounted for and paid by Mr. Calvert, for it makes no provision for their payment in respect thereof, and it may perhaps well be doubted whether the trustees acting under the deed, would have been specially justified in doing any act which would revive this claim or subject the trust property to its payment and yet if that claim had been submitted to the Arbitrators and they had awarded that nothing was due Mr. Carter than he received under the settlement of 1836 it would be unjust to exclude from the security of the property conveyed by the Deed.

The Defendant relied upon by the Defendants to show that Carter did agree and expect that the settlement of 1836 should be opened, I think is sufficient to overthrow the strong presumption and practice proof the other way.

No proof of prescriptive [illegible] relied upon is found in the paper C13 No. No. 3 and the Evidence showing a correction by Carter of one of the items in the account written upon that paper. The account purposes to be an account of Moneys and property paid to and charged against Mr. and Mrs.