that the award does not make a final end and determination of all the matters submitted, and is therefore not binding on the parties; The Arbitrators first find that at the death of George Calvert on the 18th of January 1838 there was due from him to Rosalie Eugenia Carter wife of Charles H Carter the aggregate gross sum of $8039.51 and to Julia Stuart Wife of R H Stuart the gross sum of $7426.09 And they further find that payments to a considerable amount had been made by the said Charles B Calvert to the said Charles H Carter and R H Stuart respectively on account of the said first and respective sums of $8039.51 and $7426.09 since the death of the said George Calvert for which he is entitled to credit them. And they further award "that a fair account be taken between the said parties of the balance due if any on account of the said respective sums of money so as aforesaid due by the said George Calvert at the time of his death, and that the same be paid & distributed to the Charles H and R H respectively.

The amount thereof to be found by Mr Charles B Calvert was to depend upon the result of an account to be taken thereafter by them and within that time and upon what principles is not stated.

That reservation of a future power by the Arbitrators in their award if it effect the whole of the award will render the whole of the award totally void. This is a case even the reserved power is to be exercised by the Arbitrators themselves as is conclusively shown in the case referred to in Watson on Awards pages 104 to 108 because the award discussed does not all the matters submitted having nothing open to be settled by matter subsequent, this award however is more obnoxious to objection because it does not appear by them the account is to be taken, nor within what time, nor upon what principle. Instead the great object of the parties which was to ascertain the amounts due by a friendly reference of the matters in difference between them, to the material facts as detailed as. Notwithstanding the award an account is to be taken. It is no answer as it seems to me to say that there was no dispute in fact between these parties, in regard to the payment made by Mr Charles B Calvert to his Brothers in Law after the death of his father This does not appear upon the face of the award itself nor by reference to any document or schedule appended to it, or in any way made part of it. If the award had referred to the paper marked B 130 104 and had directed the payments there mentioned to be credited against the sum awarded so that the result might have depended upon a mere arithmetical calculation, the case might have been different because that perhaps might have been referring a mere ministerial and not a judicial question and this might & within that class of cases referred to in Watson 105-106.

But to take an account was certainly not to perform a mere ministerial act, It was in fact the very thing the arbitrators themselves were to do, and which the parties to the submission preferred

to have done by them, than by a resort to the ordinary judicial tribunals.

This is an objection which I think is fatal to the award — renders it totally void and which consequently removes it from the way of the plaintiff in this case.

The only remaining question which I deem it proper to notice in this case relates to the claim of the plaintiff to a portion of the damages found by the Naw Riva Company for the right of way through certain lands. It appears by an extract from the Deed executed by George Calvert deceased to the Williamsburg and Elk Ridge Road Company dated the 4th of March 1834 (which it is agreed shall be taken in lieu of the whole deed) that for the consideration of Eleven thousand dollars he conveyed to the Company all his interest both at law and in Equity in and to his fifty acres of land as therein described for the sole purpose as expressed in the Deed of the passage and construction of the Road through said land which lands as appears by an agreement filed in the 17 Issue belonged in part to the children of Mrs Calvert, and in part to George Calvert. The question and the question raised is whether the children of Mrs Calvert, of whom the Complainants Wife is one, are entitled as against the representatives of George Calvert to recover any portion of the money so found by them by the Company, and if so the agreement shews. The proportion or given the data by which the amount may be ascertained.

My opinion is that can be no recovery against the representatives of Mr George Calvert in respect of this money — whatever may have been the intention and purpose of the parties to the deed, it is very certain that Mr Calvert could only convey to the Company his interest to the land and the Deed in fact purposes to convey nothing more. It does not attempt to convey the interest of his children and if so the Materials are not before me by which I could confirm the contract, considering it a contract made for or in behalf of infants and entitled within provisions of the 12th section of the act of 1785 ch 72 which authorises the Court to confirm contracts made for or in behalf of infants, when upon an examination of all the circumstances it shall appear for their interest and advantage so to do.

It will become necessary I presume to refer the case to the Auditor to state an account ascertaining the amount due from the deceased Mr Charles B Calvert as the legal representative of his father, or from him and his Co trustee George H Calvert in account of the Estate of the Maternal Grandmother of the deceased Mrs Carter as pointed by the Will but as I understand in the course of the argument that some agreement might probably be made, which would facilitate account, I will not at this time pass an order.

The Will directs and minor the question and I do not purpose at this time to express any opinion in reference to the trust created by the Marriage settlement of this 13 of January 1852,