brief that Mr Waters, very clearly shows that there was a dispute between the complainant and the defendant's testator growing out of a joint purchase of land from a Mrs Swearingen, which was referred to the arbitrament of himself and a certain John H. Worthington, and that at the close of that arbitration, Peter Tabler the defendants testator, gave by mistake a single Bill to the Complainant for double the amount ascertained to be due, which single Bill, by the agreement of the parties was retained by the Complainant, to be adjusted at the final settlement between them, when the proper credits would be given and the mistake corrected. If the evidence of Mr. Waters identified the single bill now exhibited as the foundation of the complainants claim to be the same, bill given by Peter Tabler at the close of the arbitration referred to by the witness, then there would be an end of this enquiry. The mistake would be clearly demonstrated, and this Court would feel no difficulty in so pronouncing it. But the witness does not identify the single bill to be the same. He says he presumes it to be the same from the fact that it is drawn in his hand writing and witnessed by him; But he says he does not know that it is the same single bill and further says that he cannot tell whether there was any other note written by him or how many. He does not for the period at which the arbitration was had and of course there is nothing in the record to shew that the single Bill now in question, was drawn about that time. There is nothing to identify the single bill to be the same but the presumption of the witness; such proof is not sufficient to establish the alleged mistake. Abraham H. Castle testifies that in the Spring of eighteen hundred and forty six, Peter Tabler admitted that he owed the money called for by the single bill now in question to the Complainant and would pay it. If this be true (and there is no ground to doubt it) it is impossible that it can be the same single bill as that referred to by Mr Waters. The result is, from what has been said, that the alleged mistake is not sustained. 2nd Does it appear from the record that the single bill was settled, by Peter Tabler the defendants testator? In November eighteen hundred and forty four, the Complainant brought suit on the Law side of this Court upon the single bill against Peter Tabler. At the February term of that Court in the year eighteen hundred and forty six. The suit stood upon the trial docket No 37 Trials. At the third day of March eighteen hundred and forty six and during the said term of Court, the case was entered "settled" At that time Peter Tabler was living and as appears from the proof in the record, died about the twelfth day of April, eighteen hundred and fifty two. At the time of his death, the single bill was still on file among the papers in the said case and the entry "settled" still remained on the record

unquestioned on the second day of August eighteen hundred and fifty two, at the instance of the complainant the single Bill was delivered to him by the Clerk under and order of this Court. It thus appears that the said single bill remained on file among the papers in the case with the entry "settled" upon the record for seven years and five months and until near four months after the death of Peter Tabler with its full legal import and effect - without having been questioned at any time by this complainant so far as it appears in this record; under such circumstances, the legal import of the entry settled, and the long apparent acquiescence of the complainant in its propriety and correctness furnishes the strongest prima facie evidence of the payment of the said single bill, unless the natural conclusion which springs from this part of the proof, can be considered as overcome and repelled by the other proof in the cause; the defence set up in the defendants answer must prevail and the bill dismissed. The burden of proof is upon the complainant to remove the legal inference arising from the entry "settled", and this long apparent acquiescence in its correctness. For the purpose of repelling this prima facie evidence of payment the complainant relies upon the judgment stated in this exhibit B. This is a judgment obtained against the defendant as the executor of Peter Tabler by the Complainant upon the single Bill. This judgment was excepted to as inadmissible in evidence, and on the judgment of this Court the exception is well taken. This is a proceeding to subject the real estate of a devisee to the payment of debts on the ground of deficiency of personal assets. In such a case a judgment against the administrator does not furnish evidence of the original debt against a devisee at law. This is not an open question in Maryland. Gaither & Gaither as Welch vs 3 Gill & Johnson 386. 259. But if the Judgment was admissable in evidence it is on a Judgment to bind assets quando acciderint, and not sufficient under the circumstances of this case to prove an intended acknowledgment of the claim. Such appears to have been the judgment of the Court of Appeals when this case was before them, and so it must now be regarded by this Court. Nor is the testimony of James Castle sufficient to establish an acknowledgment of the claim by the defendant. The conversation which he details occurred in April, eighteen hundred and fifty seven. In this conversation, he says the defendant used the following language. "Cousin John (the complainant) if I pay you nine hundred dollars on this note, you can give a receipt for it" and again the defendant said "I am truly sorry that I had not paid it long ago, that I could have then paid it with one half of what would pay it now" To estimate the intent and force of this language regard must be had to the circumstances under which it was used, and the purpose that prompted it.