

I am, therefore, of opinion that these claims cannot be saved from the operation of the statute upon this ground.

Some discussion was had at the bar with reference to the effect of an agreement, signed by the counsel of Louis Mackall, Jr., and the executor of Ann R. G. Mackall, and filed on the 17th of October, 1849. Prior to this agreement, that is, on the 21st of the preceding July, an order had been passed, ratifying so much of the report of the Auditor of the 17th of the preceding month of May, as related to her claims, numbered 3, 5, and 6, and to the balances distributed to the heirs-at-law of Thomas Mackall; and, by the agreement in question, which admitted that these claims were allowed, with the assent of the counsel for said Louis Mackall, Junior, under an erroneous impression that the objections of his client to said claims had been removed, it was among other things agreed, that so much of the Chancellor's order as related to said claims should be rescinded, and that such claims should stand as before such order; and, therefore, on the same day an order passed accordingly.

It is insisted now, that, upon the true construction of the stipulation, "that the said claims should stand as before such order," the defendant, Louis Mackall, Junior, cannot be permitted to rely upon the plea of limitations. Such, however, is not my understanding of the effect of this agreement. The agreement, and the order of the Court passed in pursuance of it, placed these claims in the same situation, in all respects, in which they stood before the order of the 31st of July, 1849, ratifying as to them the report of the Auditor, and if, prior to the passage of that order, they were liable to the plea of limitations, they became equally liable when it was rescinded, because, by the terms of the agreement, they were to stand as they stood before the order. The case of *Welch vs. Stewart*, 2 *Bland*, 42, states, I think, the rule correctly, and shows that the statute of limitations may be presented as a defence at any time after the claim has been filed or brought before the Court, either before the case has gone to the Auditor, or after he has made a report on it.

But suppose the ground now taken by the solicitors of Ann