

R. G. Mackall be correct, and these claims are to stand or fall upon the pleadings and proofs as they stood at the time of the agreement, and when the order upon it passed, how could that benefit the executor? If the agreement precluded the one party from interposing a new objection to the claim, it must have the effect also of precluding the other party for offering new proof in its support. The stipulation must certainly be mutual and reciprocal, and binding upon both parties or upon neither. It never would do to say to Louis Mackall, Junior, you shall not be permitted to set up a new defence to these claims, but the opposite party shall be at liberty to sustain them by additional evidence. If the claims are to be finally passed upon by the Court precisely as they stood when the agreement was filed, and order upon it passed, then their fate must depend upon the state of the proof at that time.

It cannot be doubted that Louis Mackall, Junior, had a right, notwithstanding the agreement, to insist that the claims were not proved, and to call upon the Court to say whether they were fully proved or not. This he did by his exceptions filed on the same day with the agreement, and at the same time he insisted on the defence of limitations. Now, conceding, for the sake of the argument, that the plea of limitations should be shut out in consequence of the agreement, and that these claims are to be allowed or rejected according as they stood at the time, they must inevitably be rejected, there being no pretence that they were *then proved*. The evidence relied upon to sustain them having been subsequently taken and returned to this Court, on the 20th of June, 1850, eight months after the agreement was filed, it would be strange, indeed, if the holder of these claims could be permitted to rely upon the proof taken since the order, when he insists that, according to the order, the parties were required to abide the judgment of the Court as the claims stood at the time, and, of course, upon the proof then in the case.

The report of the Auditor of the 25th of November, 1850, is approved of, in so far as it excluded No. 5, and the other claims excluded, except claims 40 and 41, the objections to which have been withdrawn, as not proved, or as otherwise