

which were specially directed against the allowance of claim No. 50; and by an order, dated the 9th of the same month, the 19th of the then ensuing July was fixed for the hearing, with liberty to the parties in the mean time to take proof in the usual way, and upon the usual notice, in support of their respective claims; and the cause coming on, to be heard upon the exceptions, and being submitted, an order passed on the 21st of July, 1852, in which, among other things, it was said, "The payment of claim No. 50 will likewise be suspended for further order. The proof in support of it is defective, but as it is founded on the judgment of a Court of competent jurisdiction, and no order has yet been passed in the cause, by which claims not sufficiently proved are directed to be excluded, and the fund is still under the control of the Court, it would not be proper absolutely to reject it without giving the party an opportunity to remove the objections to its allowance." And the cause was, by the said order, again referred to the Auditor, with directions to state a further and final account, from which all claims should be excluded which were not sufficiently proved.

In conformity with this order, the Auditor, on the 21st of October, 1852, made his report, with an account marked D, from which claim No. 50 was excluded, no new proof in support of it having been produced. This report was filed the day after.

Exceptions were filed by Matthews, the owner of claim No. 50, to this report, upon the ground that said claim was on its face entitled to a preference, as founded on the mechanics' lien law. Upon this exception no order has yet been passed; and on the same day, to wit, the 22d of October, 1852, the said excepting creditor filed his petition, in which, among other things, it is stated, that he had always understood from the trustee who made the sale, that a proper amount of the trust fund would be retained, to answer and abide the result of the appeal which had been taken by the trustees against his claim, and which was still depending in the Court of Appeals, and praying that the cause might be again remanded to the Auditor,