

applied in *Kent vs. O'Hara*, would be relaxed or not, because the cases are unlike in the material circumstance, that the final report of the Auditor rejecting the petitioner's claim has not only not been ratified, but the petitioner filed his first petition for leave to offer further proof of his claim, on the same day the report itself was filed, that is, on the 22d of October, 1852. There is, moreover, this additional circumstance in favor of mitigating any general rule in its application to this case. It appears to have been the understanding of this petitioner, that his claim, though it might be established to the satisfaction of the Court, was not to be actually paid, but that a sufficient amount of the proceeds of the sale should be reserved, to await the final decision of the Court of Appeals upon the appeal taken by the trustees; and the language employed by this Court, in the order of the 5th of February, 1852, passed upon his petition filed on the day preceding, was certainly such as to give countenance to this supposition. In that order, after rescinding the order of the 31st of January preceding, the Auditor is directed "to state and report another account, distributing the *residue* of the proceeds of sale, first reserving from said proceeds such amount thereof as may be sufficient to pay the claim of the petitioner, should the same be established." The order, it will be remarked, is not to apply any portion of the proceeds to *the payment* of the petitioner's claim, but to *reserve* an adequate amount for that purpose, should it be established, the residue only, after such reservation, being directed to be distributed among the other creditors. And looking to the character of the petition, and the other proceedings in the cause, the petitioner might very reasonably assume that his claim would not be regarded as established, nor a final decision be passed upon it, until the Court of Appeals should have decided upon the appeal then and now depending in that tribunal, and this reasonable assumption might very well have been strengthened by the letter which the Auditor, with great propriety, addressed to the counsel of the petitioner two days after the date of the order. In that letter he says: "The Okisko Company case has been