

proof should be considered, and if found sufficient to remove the objection, the parties should be allowed to come in for their fair proportion of the estate of their debtor.

The general rule I understand to be this :

When funds are in this court for distribution among creditors, and the Auditor reports, that certain claims have not been proved, or parties interested object to their allowance for want of proof, the case is referred again to the Auditor, with directions to state a final account, from which all claims not then sufficiently proved, are to be excluded, and leave is given to supply the proof, upon such terms, as to notice, as may be deemed reasonable. Upon the coming in of the report of the Auditor, made pursuant to the order, and after the usual time given for filing exceptions, the report may be submitted for ratification, and when ratified, all parties are concluded, and the litigation is terminated.

This, I say, is the general rule, but as the Court of Appeals say, in *Kent vs. O'Hara*, there may be cases in which it would and ought to be relaxed, as there are cases in which new trials are granted at law, upon the production of new proof, when the party applying for it can show himself free from blame or negligence in not bringing it forward earlier.

And even in the interval between the final report of the Auditor, made under the directions of the court, and its ratification, it is not of course that parties are entitled to offer further evidence in support of their claims, when they have already had an opportunity to establish them, and have neglected to do so. But the circumstances necessary to entitle them to this indulgence in the latter case, need not be so strong, as where the report of the Auditor has been ratified by the Chancellor, for then it is *res adjudicata*, and though the fund may yet be under the control of the court, the party asking for a re-hearing, must come armed with circumstances sufficiently strong to acquit him of the blame apparently imputable to him, for not offering his proof at an earlier stage of the cause.

But in this case, as before stated, the claims now under consideration have not been adjudicated upon, and, I am of opinion, the facts disclosed in the petition of the owners of claim