

with leave to the petitioner to produce the proof necessary to establish his claim, before the 30th of the month, the expense of the new audit and account to be borne by the petitioner; and upon this petition, as yet, no order has been passed. Afterwards, on the 25th of the same month and year, the petitioner filed another petition, with which he exhibits and files what he supposes to be sufficient proof of his claim, and repeating what he had said in his former petition, as to his expectation that a sum would be reserved to cover his claim, in case the Court of Appeals should affirm the judgment of the Howard District Court, he prays that the cause may be again sent to the Auditor, to state another account at his expense. Upon this petition, an order passed on the 29th of the month, in which, after observing that to grant the prayer would be contrary to the practice of the Court, and opposite to the case of *Kent vs. O'Hara*, 7 G. & J., 212, the petition was dismissed with costs.

On the 3d of November last, Matthews filed a third petition, in which he reiterates with more fulness of detail the impression, and the grounds of the impression, upon which he and his counsel had supposed that no final order would be passed upon his claim until the appeal taken by the trustees should be heard and determined; and that he and they remained under that impression until the audit of October, 1852, was made. Upon this petition an order passed, suspending the order of the 29th of October preceding, by which the former petition had been dismissed, and for a hearing on notice to the excepting creditors, and the counsel of the parties having been heard, the question remains now to be decided.

Upon a copy of the last petition and order, the surviving trustee has endorsed and signed a statement in these words: "The undersigned surviving trustee hereby certifies that the allegation of this petition, that the claim referred to was to await the final decision of the Court of Appeals, is correct, his impression being that there was a fund to be reserved to await that issue."

The question, then, which presents itself upon these circum-