

referred to me to state an account, *reserving funds to pay the claim of Thomas Matthews, should the Appellate Court decide in his favor,*" and asking to be furnished with a short copy of the judgment and costs, that he might ascertain the amount of the claim, or supplied with such information as would enable him to reserve money for its satisfaction.

It is certainly true that by the order of the 21st of July, 1852, the owner of claim No. 50 was apprised of the necessity of supplying more satisfactory proof, and that he is in some default for not having done so, but it is to be remembered that the account reported in obedience to that order has not been confirmed, and that on the very day the report was filed, to wit, the 22d October, 1852, the petitioner was here, by his counsel, and asked for only a delay of eight days, to enable him to furnish the evidence of his claim, and for a new audit at his expense, and that, in fact, on the 25th of the same month, being only three days after the report was filed, he did produce and file what he supposes to be sufficient proof of his claim, and repeating the offer to defray the expense of a new audit; he prayed that the proof of his claim now produced might be submitted to the Auditor for examination. This petition, as before stated, was dismissed by the order of the 29th of this month, and in so doing, I am now of opinion, upon a careful examination of the proceedings, and fuller reflection, the Court fell into error, and so thinking, I consider it my duty to repair it.

Though, as already said, I think the petitioner was in some default, yet it appears to me it is not of that gross and flagrant character, as to render it proper to shut the door of the Court in his face without ever examining his claim. It is unquestionably true, that down to the order of the 21st of July, 1852, the petitioner was warranted in supposing that no final decision would be made upon his claim until the pending appeal should be ready, and that, in the mean time, a sufficient amount to cover it would be reserved. The previous order of the Court justified him in supposing such would be the case, and this, I think (the last audit not having been confirmed), is