

day-book, folio 99. As the articles included in this account, from their nature, and from the entries on the books, appear to have come to the use of the company, the claimant seems to have been improperly charged as between *Messrs. Post* and himself, unless a cross entry is made, allowing him the amount as against the company.

The fifth error alleged is for amount of two drafts on and accepted by *A. Mitchell* in favour of *R. Caton*, at four months; the one dated the 19th of February, 1822, for \$649; and the other dated on the 10th of February, 1822, for \$623 43. In day-book, folio 65, the claimant is made debtor to drafts accepted for amount of those drafts, and in folio 93, is made debtor to the company for payment of the same drafts by *A. Mitchell*, agent. The auditor thinks that this error is proved.

But in the sixth place, the claimant denies his liability for the amount of the draft for \$623 43; insisting that it should be charged in account to *Dr. Troost*. But no evidence of *Troost's* liability has been furnished; and in the absence of such evidence, the claimant should not be relieved from the charge.

The seventh error complained of, is for the claimant's draft in favour of *Charles F. Mayer* for \$50. It is alleged, that this draft has not been paid by the company. But no proof has been furnished, by which the auditor could try the correctness of this allegation. The auditor, therefore, thinks, that the error is not proved.

The last error is for amount of the capital furnished, or supposed to have been furnished by the claimant. He claims for capital, and additional capital, the sum of \$9,166 66; and for negro capital the sum of \$1,197 70. The former sum is entered in leger, folio 9; but he is clearly mistaken in supposing, that he has been charged with the amount of his negro capital. The auditor has, therefore, made a deduction only of the amount of capital and additional capital. But to this reduced allowance the auditor objects; because, as capital, it cannot be considered a claim on an equality with the claims of creditors of the company, but should be introduced in an account of distribution of surplus estate, if there be any surplus, among all the capitalists. And if the auditor be correct in this opinion, the claim should be further reduced by the amount of negro capital, to the amount of which the claimant's advances are applicable. For the same reasons, the amount of capital to be contributed by the claimant, *viz.* \$10,364 36, should