

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 favor 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 favor 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 ledger 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
649 * be reduced from the amount of claim No. 14; no credit having been allowed therefor in said claims.

But the auditor further reports, that by an agreement made and entered into between Richard Caton and others, who were afterwards incorporated by the name of the Cape Sable Company, of the first part, and said Philip G. Lechleitner and Gerard Troost of the second part; and dated on the 25th of September, 1813, the said Lechleitner and Troost engaged to erect and establish, on the lands at Cape Sable, belonging to said Richard Caton and others, works for making copperas and alum; and to carry on and super-