

aforsaid sum of \$17,000, upon any principle which will not render the said Lechleitner equally liable for all other debts of the company.

And as it may be inferred from the instructions in obedience to which the present account is stated, that the auditor's opinions, expressed in his former report, are misunderstood, he begs leave to submit the following remarks in explanation.

The opinion is still entertained, that the agreement of the 25th of September, 1813, made the said Philip G. Lechleitner and * Gerard Troost, co-partners with the said Richard Caton and others; and with the Cape Sable Company since its incorporation; and as such their claims for capital on additional advances, should be postponed to the claims of the mere creditors of the company. And, as a consequence, the said Lechleitner and Troost are personally liable for all contracts and engagements entered into by the company in furtherance of the objects of the association. **654**

The auditor distinguished the claims of the said Lechleitner and Troost for capital from their claims for additional advances, because the distinction was made by the said Lechleitner in his own statements; and was recognized by the books of the company. But the agreement of the 25th of September, 1813, to which the auditor referred, converts all advances of the said Lechleitner and Troost, until profits were made sufficient to meet disbursements, into capital, and provides for their reimbursements as capital. The aforsaid claims are therefore to be treated as the claims of copartners for capital advanced to the common stock.

The aforsaid agreement provides for a distribution of partnership property in the event of a dissolution; which was operated by a decree in this case. But as, in the auditor's opinion, the concern is insolvent and inadequate to the payment of debts, the auditor supposed it was unnecessary to attempt an adjustment of the claims of the partners. The claim of P. G. Lechleitner was stated, because it was filed and insisted on as a claim of a creditor. The auditor's report was intended to exhibit the facts on which the claim was founded, and the equities which might be supposed to arise thereout, considered as the claim of a creditor. But the auditor submits, that his said report does not admit the said Lechleitner as a creditor to any amount whatever.

After which, on the application of the defendant Oliver, it was, on the 9th of May, 1832, ordered, that the auditor's reports and the exceptions thereto stand for hearing on the 8th of June following; provided a copy of the order be served on the exceptants, or their solicitors, on or before the 20th instant. And copies having been served accordingly, the matter was afterwards brought before the Court.