

bound by accepting, or endorsing, or otherwise for the use of said Lechleitner and Troost.

The auditor finds, that said Mitchell, Lechleitner and Troost, as agents, were in the habit of drawing, endorsing and accepting bills and notes on account of the Cape Sable Company, and that in the ledger book of the company, folio 8, the said James Neilson is made a creditor for amount of the said two bills. The last entry, in relation to these bills, is of the 31st of December, 1823. But the *defendants, including the Cape Sable Company, and Robert Oliver, on the 19th of March, 1827, under a **645** commission issued in the causes, filed an account, W. 1; which professes to be an account of the debts due by the company, and states this claim to be a claim against the company. Under these circumstances the auditor submits, that the said claim is not barred by limitations. But the auditor further suggests, that if those bills were intended to be secured by the mortgage, before referred to, they are to be considered as given, in fact, for the proper debt of the drawer's; and the Cape Sable Company would be in the nature of a surety. The general usage, in the case of a claim filed against the estate of a surety, is to require proof of the insolvency of the principal debtor. He submits, whether the peculiar form of the contracts which renders the company primarily liable at law, should exempt this claim from the operation of the general rule.

Claims No. 7 and 8, are not proved in the usual manner. They are on notes of more than three years standing; and appear to be barred by limitations; which is pleaded by Robert Oliver.

The said Robert Oliver has also pleaded limitations against claims No. 9 and 12. But the auditor thinks they are not barred; as payments are proved to be made on account within three years. Claim No. 10 is not proved in the usual manner. The said Robert Oliver has also pleaded the Act of Limitations against claim No. 11. But by the auditor's report, filed 8th of March, 1828, the said Eli Balderson, the claimant, is made a creditor to the amount of \$2,285.25, exclusive of interest. If, as the auditor is inclined to think, the said report, prepared from materials furnished by the company, is evidence against the defendants to rebut the plea of limitations, there will be sufficient evidence to sustain the whole claim as stated. The auditor's report, so far as respected this claimant, was *ex parte*; whereas, for the amount of his claim, he relies on an account stated between himself and A. Mitchell, the agent of the company.

Claim No. 14 is the claim of Gerald Troost; who was, for several years, the manager or superintendent of the Cape Sable Company's Works. It commences in September, 1813, and continues to the year 1822. A number of vouchers have been filed to sustain