ON

PARTNERSHIPS

OF

LIMITED LIABILITY.

A PAPER READ BEFORE

THE

DUBLIN STATISTICAL SOCIETY,

ON THURSDAY, 6TH FEBRUARY, 1852.

BY JONATHAN PIM, ESQ.

[Some passages are omitted which were read before the Society, and some additions are made which convey more fully the object of the writer, while they do not alter the tenor of his argument.]

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Dublin Statistical Society.

THIS society was established in November, 1847, for the purpose of promoting the study of Statistical and Economical Science. The meetings are held on the third Monday in each month, from November till June, inclusive, at 8, P. M. The business is transacted by members reading written communications on subjects of Statistical and Economical Science. No communication is read unless two members of the council certify that they consider it in accordance with the rules and objects of the society. The reading of each paper, unless by express permission of the council previously obtained, is limited to *half an hour*.

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On Partnerships of Limited Liability. By Jonathan Pim, Esq.

By the laws of England, any person who shares in the profits of a business is a partner He is bound by the acts of his co-partners, and is liable, in case of loss, to be called on to make good any deficiency in the assets of the firm, to the whole extent of his property. The only exceptions to this law are those joint stock companies which have obtained charters or acts of incorporation limiting the liability of the shareholders.

The laws of most of the countries of Europe and those of the United States of America recognise another description of partnership, in which the liability of some of the partners is limited to the amount of capital advanced by them for the purposes of the business.

There is also an act of the Irish Parliament, the 21st and 22nd Geo. III, chap. 46, commonly known as "the Anonymous Partnership Act," which permits partnerships of similar character to be formed in Ireland.

The unlimited liability existing under the English law prevents a prudent man from connecting himself as a partner with any business to which he cannot give his personal attention. This operates as a restriction on the employment of capital, and it has been suggested that it would be of advantage to the community to adopt the system of partnerships of limited liability practised in other countries.

The fact that such partnerships are recognised by the laws of all or almost all the civilised nations of the world, except England, that they are used extensively, and that the system is everywhere liked and considered to work well, affords a strong presumption in their favour, and makes it incumbent on those who oppose the introduction of such partnerships into these countries to support their opposition by strong arguments.

The first consideration appears to be, whether the proposed limitation of liability be consistent with justice Any system which is not founded in equity is not likely in the end to prove useful in practice. If there be no specific agreement between the partners, they are bound to bear the losses in the same proportion as they share the profits But this rule may be set aside by the agreement of the parties concerned, and if they choose to limit the liability of one or more of the partners to a certain fixed amount, they are fully at liberty to do so. Such limitation of liability is perfectly just, as respects the partners themselves.

The important question however is, whether it be just as respects the public. It is alleged as a principle, that the acts of one partner bind all the rest, and that whatever engagements in the way of business any one partner may contract, all others who have a share in the profits are equally responsible for their fulfilment This depends

on custom, and is modified in certain cases It holds good generally as respects bills of exchange, but not as respects the signature to a deed, and even with bills of exchange there are some cases of exception It is easy to imagine circumstances, in which the power of one partner to bind the rest might be more limited than it is, without any injustice being done.

The man who contracts an engagement is bound to fulfil it; and, if, at the time of making such engagement, he is understood to be acting not only for himself, but for other parties also, who are interested along with him, and if such understanding be with their privity and consent, then those other parties are bound to the engagement equally with the actual contractor This responsibility arises, not because those parties have an interest in the matter at issue, but because the engagement was entered into in the faith that they were parties to it, and on their credit; and it is binding on them, whether they have any actual interest in it or not Thus, a person who allows his name to be used, or who holds himself out to the world as a partner in any business, is justly held responsible for the engagements of that business, even though he have no share in the profits

It therefore appears that responsibility towards a third party is established, not by one partner binding all those who are interested together with himself, but by a man acting for himself and for those who allow him to hold them out to the world as responsible for his acts When the third party has no knowledge of the existence of others interested, or when he has sufficient notice that their responsibility is limited, it is evident that he does business on the credit of the acting partner only; and it appears to me that he suffers no injustice, if, upon the failure of the acting partner to fulfil the engagement, he is debarred from looking to any one else And if the partners whose liability is limited have given sufficient notice of this limitation, and if they do not themselves contract any engagement by taking on themselves any part of the management of the business, it appears to me that they have not incurred any moral obligation to discharge the liabilities of the concern, beyond the amount originally agreed to and published to the world.

If the existence of partnerships of limited liability be consistent with justice, and if such partnerships be not contrary to the public welfare, they ought to be protected by law. The office of the legislator in such cases is, not to restrict the freedom of association for purposes of trade, but to make such arrangements as will enable that freedom of association to be exercised without opening a door to fraud It is not a sufficient answer to this reasoning to allege, that it is impossible to effect the object completely. There is no relation of social life in which injustice is not at times done and suffered; and if we are to restrict men from liberty of action, in all cases in which such liberty would afford them an opportunity of doing a wrong to others, we must restrict them from all liberty of action whatever.

Partnerships of this description are known in France and in several other countries of Europe by the name of Partnerships "en

commandite" In these partnerships there are one or more acting and responsible partners, called the "gérants," by whom the business is managed, and in whose name it is carried on. There are also one or more partners called "commanditaires," who are forbidden to engage in the management of the business, and whose names do not appear in the firm. The "commanditaire" is responsible for any losses which may occur, only to the extent of the capital advanced by him, but, if he take any part in the management, or if he be employed in the business of the company in any manner, he thereby becomes an acting partner, and is responsible, without limitation, for all the debts and engagements of the firm.*

The regulations existing in the United States for such partnerships are nearly similar to those in France They are called "Partnerships of limited liability" The acting and responsible partners are called "general partners," and their names only are to appear in the firm, without the words "and company" Those whose liability is limited are called "special partners" If the name of a special partner be used with his privity, he becomes a general partner The amount of capital originally invested by a special partner must not be reduced by the payment of either interest or profits, and if, on any settlement of accounts, the business appears to have been unproductive, so that the capital of the special partner is reduced, he is bound to make it up to the original amount, by the repayment of whatever he may have previously drawn as profits, with interest. A special partner may examine into the state and progress of the partnership concerns, and may advise as to their management, but he must not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney, or otherwise. If he so interfere, he becomes a general partner.

The most important provision for preserving the rights of the public and preventing injustice is publicity To ensure this, the American law requires the main features of the contract, entered into by the parties forming such limited partnership, to be registered in the office of the clerk of the county in which the business is to be carried on The certificate for registration must be duly authenticated and signed by all the partners; and must state the names of all the partners, distinguishing which are general and which are special, the amount of capital advanced by each special partner; the nature of the business, the place of business and other particulars; and at the time of registration it must be proved on oath by one of the general partners, that the sums specified in the certificate have been paid in cash. The terms of the partnership, when thus registered, are to be published several times in two local papers; and the partnership cannot be dissolved, previous to the time specified in the certificate, until such dissolution has been recorded in the clerk's office, and published for four weeks in local and state newspapers In the case of insolvency, no special partner can under any circumstances claim as a creditor, until all others are paid in full †

* Code de Commerce, Art 23 to 28.

† Leone Levi on Commercial Law, vol. 1, pages 74 and 75.

The propriety of introducing the commandite system into England has more than once engaged the attention of committees of the House of Commons. Last year a Select Committee was appointed to consider it, and a report and minutes of evidence have been published. Fifteen witnesses were examined, of whom two only were opposed to its introduction, namely, William Cotton, formerly Governor of the Bank of England, and William Hawes, an extensive merchant. The Committee also obtained written opinions from twelve persons, chiefly professional men, of whom Lord Brougham, H. Bellenden Ker, and Alderman Hooper were the only opponents. Among the parties examined, and who gave oral or written testimony in favour of permitting partnerships of limited liability, were J. Stuart Mill; Charles Babbage; Edward Holroyd, Commissioner of Bankrupts; G. R. Porter, Secretary to the Board of Trade; Sir George Rose, Master in Chancery; James Stuart, Secretary to the London Society for the Improvement of the Law; R. G. Cecil Fane, Commissioner of Bankrupts; and J. C. Bancroft Davis, Secretary to the American Legation.

The Committee did not agree to report in favour of the system of special or limited partnership, but they "recommended that power should be given to lend money, for periods not less than twelve months, at a rate of interest varying with the rate of profits in the business in which such money may be employed; the claim for repayment of such loans being postponed to that of all other creditors; that, in such case, the lender should not be liable beyond the sum advanced, and that proper and adequate regulations should be laid down to prevent fraud."*

This plan of a loan for twelve months, instead of advancing a portion of the capital for the full term of the partnership, was suggested by William Hawes, and met the approval of William Cotton, these being the only witnesses who objected to the system of limited partnerships. It does not appear to me any improvement on the plan generally adopted elsewhere. A loan for twelve months may be recalled when the twelve months have expired, and then the borrower is left in a position of much greater difficulty than if he never had had the loan, inasmuch as he has been relying on a capital which is suddenly withdrawn, probably because the capitalist suspects that all is not going on well. The "commanditaire" or "special partner" on the contrary, cannot withdraw his capital, until the term of the partnership is ended, or until ample notice has been given that an earlier dissolution is proposed.

The principal objections, relied on by those who opposed the introduction of limited partnerships, were, that in a country possessed of so much capital and enterprise, any additional facilities for business are unnecessary, and likely to lead to reckless trading, and that they would afford opportunities for fraud. It was asserted on the contrary by several of the witnesses, that the operation of the proposed system "has had a tendency rather to check rash enterprizes;" and it was

* Report of the Select Committee of the House of Commons appointed to consider the law of Partnership, page viii.

particularly stated by J C. Bancroft Davis, secretary to the American Legation, that "the number of failures under it is much less than among those who are doing business in the ordinary way."* Evidence of a similar character was given by other witnesses; that in Holland "these partnerships have produced much good and little evil, and have caused less controversy than other partnerships;" that "all who have transactions with the acting partner are fully aware that he is the only responsible person;" that the failures in them are neither "more frequent nor worse" than in other kinds of partnership: that although subject to the vicissitudes of commerce, they have been "proved by experience to be advantageous to the community;" that "such partnerships" in America "command as much credit and general confidence as ordinary partnerships, perhaps more," on account of "the certainty in the knowledge which the community possess of the resources of such firms;" that "the commercial effect of these partnerships has been beneficial," having imparted great activity to trade; and that "failures have not been more frequent nor more disastrous than in other partnerships, nor have they been abused in periods of excitement," and that "under the laws creating them, they are not liable to more abuse than other forms of partnership."†

The danger of the capital engaged in the concern being improperly reduced, by the "commanditaires" or "special partners" drawing out as profits more than a correct account might entitle them to, will be obviated in part, by the interest of the acting partners to maintain the capital undiminished. It may also be met by obliging the partners to take a strict account of assets and liabilities every year; and to preserve the same duly entered in a book, and signed by the parties concerned; and in the event of any failure, if the special partners are not able, by such account, to prove that they have withdrawn nothing as profits which had not actually been realized, they may be made liable not only as respects their original investment, but also to the extent of all sums received by them, either as profit or interest, during the existence of the partnership. It appears to me that the law can scarcely be too stringent on this head.

The great practical difficulty is to decide how far the special partners should be permitted to interfere as respects the management of the business They certainly should not sign for the firm, nor transact any business on its behalf, by which they might appear to the world as managing its affairs They ought to be at liberty to examine into the mode of management, to inspect the accounts, to consult with and advise the acting partners, and to control them if they appeared inclined to do anything contrary to the original contract. In practice, I think it will be safer to interpret this right of interference in a liberal rather than in a restricted sense. The care and oversight of a partner possessing capital, although with limited responsibility, is not likely to lessen the solvency of the firm

* J C Bancroft Davis' Evidence 742.
† J. Howell's Evidence, 156, 173.

It has been frequently asserted by those opposed to limited partnerships that they would open a door for fraud. The objection does not appear to me to have much foundation. If the special partners are solvent, they will be liable to the consequences of any fraud. If they have no means, it is impossible to obtain payment from them, whether their responsibility be limited or not. The best safeguard against fraud is full publicity as respects the parties concerned, the capital invested, and the terms of agreement. Great care appears to be taken in this respect in all countries where such partnerships exist. M. Van der Oudermeulen of Amsterdam, late President of the Netherlands Trading Company, stated in his reply to the queries addressed to him by the Select Committee of the House of Commons, that "the main regulations to prevent fraud are the publishing annually of a balance sheet, and the obligation to pay up the full capital when 25 per cent has been lost: or in case this is not done, to break up the whole concern as soon as 50 per cent has been lost."

When a man advanced in years retires from business, he frequently leaves a portion of his capital in the hands of his sons, for which they pay him interest. It would be fairer for the father, and certainly safer for the sons, if the rate of interest depended on the success of the business; as they would then not incur the risk of having their own capital diminished by the payment of interest, for the use of capital which did not produce them any profit. It would also be safer as respects the public, because in the event of the insolvency of the sons, the father would not be entitled to claim on their estate. The same principle will hold good in other cases in which persons in trade are assisted by a loan from a relative or friend. It is just that the lender should have the right of inspection; it is safer for the party thus assisted to be bound for interest, only in proportion to the profits of his business, and the advice and oversight of his friend will often be useful to him The interests of the public also are better secured by the claim for repayment being postponed to that of other creditors.

Several of the witnesses examined before the Committee alluded to cases of this description Reference was particularly made to the ribbon manufacturers of St Etienne in France. It was stated that "nearly half the present manufacturers have commenced business" in this manner, and that the partnerships thus formed have been in general successful; that "this mode of supplying capital enables young men to commence business, who otherwise would not be able to do so;" that "it has the tendency to encourage enterprise, and forethought, and good conduct in the acting partners;" and that it is safer as regards the public, than the manner in which young men frequently enter into business in England, because it is impossible for the public "to know the amount of capital" such young men possess, while in France the sums advanced en commandite "are made public in several ways."*

The public have at present no means of knowing the circumstances

* T. Townsend's Evidence, 370 to 383.

under which a young man sets up in business He may have no capital whatsoever, or he may have been enabled to start by means of a loan, which is almost immediately withdrawn, thus leaving him in a position of much greater difficulty than if he had never received any such assistance It is scarcely necessary to remark on the greater security which a partnership "en commandite" would afford to the public. Or let us take the case of an old established house of large capital and extensive business. The senior partners withdraw, leaving the business to their sons, who very probably retain the name of the old firm unchanged. The same business still continues, but no one can tell whether the house now possesses capital or not. It may be that the young men have ample funds of their own, or it may be that they are trading on money left with them by their father. If they get into any difficulty, he takes as good care of himself as he can, and claims on the estate, along with the other creditors, for whatever balance he has been obliged to leave in their hands If limited partnerships were legal, the father would probably have retained his connexion with them to a limited extent; his oversight and control might have been of essential service; and even if they failed at last, his capital would assist in paying a dividend to their creditors, instead of authorizing a claim on their estate.

While objections are urged against the law of limited partnership as opening a door to fraud, no objection is made to the common practice of trading under a firm which gives no indication of the names of those actually responsible as partners. This seems to me far more questionable, and it has often misled the public. The laws of France and of several other countries expressly forbid trading under any names other than those of the persons actually engaged as principals in the business.* In the United States of America, if a person suffer his name to continue in the firm, after he has ceased to be an actual partner, he is responsible to third parties as a partner † With us there is no such restriction, and it is well known that commercial houses of old standing often retain the names of persons formerly partners, who are now dead or who have long since retired from the business The retention of these names frequently leads the public, for want of enquiry, to attach undue credit to such firms, and has on several occasions enabled imprudent or unprincipled persons to contract engagements to an unwarrantable extent; and their subsequent failures have inflicted serious injury on the community. If it be desirable to continue the present practice, in order to keep up the well-known names of old-established houses, it appears to me worthy of consideration, whether the names of the persons constituting such partnerships should not be registered, so that the public should have every facility of knowing the parties actually concerned and responsible for the engagements of the house.

The Select Committee of the House of Commons were unwilling to give a distinct opinion on the propriety of permitting partnerships

* Code de Commerce, Art. 21. † Leone Levi on Commercial Law, vol. I, page 73.

of limited liability; but they came to the resolution, "that the law of partnership" "requires careful and immediate revision." They recommended the appointment of a Commission to consolidate the existing laws, and to suggest such changes as might appear necessary, and that "especial attention should be paid to the establishment of improved tribunals" for the decision of partnership disputes. They remark it as being "the opinion of the best-informed persons, that additional facilities are wanting, and that some cheaper and simpler tribunal should be afforded than the costly and tedious process of application to the Court of Chancery;" this recommendation being made no doubt under the idea that it is easier to create a new court than to amend the old one. The Committee further stated that "the uniform tendency of the evidence taken before them was in favour of an increased stringency in bankruptcy laws, in case any relaxation of the law of partnership should take place."*

I have before alluded to the Irish Anonymous Partnership Act. This act legislates for a species of partnership apparently similar to the limited partnerships of other countries. It provides that the business shall be conducted under the name of the acting partner or partners, with the addition of the words, "and company." That the anonymous partners shall not have the actual management or conduct of the trade or business, and that their names shall not appear in the firm. That the firm shall not be liable for any debts or engagements of such anonymous partners, or any of them, and that the anonymous partners themselves shall not be subject to any contracts or engagements of the acting partners; or to any loss which may happen in said partnership business beyond the amount of their capital engaged in it There are some regulations peculiar to this act, viz that it shall not apply to either banking or discounting; that the capital supplied by the anonymous partners must amount to £1,000, and must not exceed £50,000; and that the anonymous partners may only draw out half their profits on each annual settlement of accounts, the remaining half being left to accumulate until the termination of the partnership, as an additional security to the public.

I find from the registry, that the number of partnerships formed under the provisions of this law have been as follows:—

From the time of its enactment in 1782 up to			1790	41
From	1791	to	1800	89
	1801	to	1810	177
	1811	to	1820	105
	1821	to	1830	56
	1831	to	1840	37
	1841	to	1850	11
and in			1851	1
			Total	517

being a little more than an average of seven annually; and only twelve partnerships during the last eleven years.

* Report of Select Committee, page viii.

It is not easy to point out any specific cause why this system of limited partnership, which has been found so useful on the continent and in America, should have been acted on to so small an extent in Ireland. The provision that the anonymous partners shall only draw out half their profits, must have had some effect. I am inclined to think also, that the powers of the anonymous partners to examine into the management, and to control the conduct of the acting partners, have been interpreted by our courts of law in a more limited sense than has been the case in France or America; and that acts have been held to be an undue interference in the business, and to render the anonymous partner liable as a general partner, which would not be so considered elsewhere

However this may be, there is no doubt that these partnerships are looked on with much apprehension by the mercantile community; and even with the legal profession the idea exists very generally, that they are not practically workable, and that the conditions to be fulfilled, in order to secure the protection of the act as to the limitation of liability, are such that no lawyer can advise his client to enter into a partnership, with any certainty of not being ultimately held liable to an unlimited extent.

The difficulty which is experienced by persons not engaged in mercantile affairs to find a safe investment for their capital in other than the public securities, is too well known to need much remark. It is perhaps rather increasing than otherwise. The experience of the last few years has proved the danger of engaging in public companies, without that full information respecting their business and mode of management, which it is very difficult for those not immediately connected with them to obtain. Meanwhile, the property of the country naturally increases by the savings of the industrious classes, and as it must be invested somewhere, the owners are too often induced, by the hopes of getting a greater interest, to send it abroad on rash speculations, or to adventure it in equally dangerous schemes at home. This subject engaged the particular attention of the Committee. They remark in their report, on the necessity of giving "additional facilities to investments of the capital, which the industry and enterprise of the civic population is constantly creating and augmenting,"* and several of the questions asked denote that they anticipated that such additional facilities would arise from the legal power to form partnerships of limited liability. G R. Porter states that "our law of partnership, which places at hazard the whole of a man's property, for the full satisfaction of the debts and engagements of any business into which he may have embarked a portion only of his capital, may probably be cited among the causes which may have led to the employment of British capital in foreign countries."†

The French commercial code permits the capital supplied by the commanditaires, or special partners, to be divided into shares, and

* Report of Select Committee, page iv.

† G. R. Porter's reply to queries, page 163.

to be represented by debentures transferrable from hand to hand.* This law affords facilities for joint stock companies, in which the managers are unlimitedly responsible, but the other shareholders only responsible to the amount of the stock held by each I do not see that any valid reason can be given against the formation of such joint stock companies, whether the shares be transferrable from hand to hand, or assignable by transfer in the books of the partnership. The shareholders should be entitled to inspect the accounts and examine into the mode of management at suitable times, and should have power to control the managing partners in case of their attempting anything contrary to the provisions of the deed. The managing partners should also be enabled to consult with the shareholders, whenever they thought fit to ask their advice or directions It might perhaps be necessary to give publicity to their affairs by the annual publication of their balance sheet.

This unlimited right of association would enable small capitalists to combine for the prosecution of objects which can now be undertaken by persons of large capital only; and it seems to me that it would unite the advantages of private management and individual responsibility with the command of capital, better than can be done by joint stock companies under their present arrangements. There is every probability that such associations would be conducted at least as prudently and efficiently as joint stock companies with unlimited liability are now The managing partners would have the same inducements for care and attention as in private partnerships; and the public would have the security of their unlimited responsibility, in addition to knowing the amount of capital invested by the shareholders, as published in the yearly balance sheet. They would judge of the solvency of the establishment, as in the case of individuals or private partnerships, by the general character of its management The directors or managing partners should of course be remunerated, so as to make it worth their while to take on themselves this care and responsibility, either by an additional share of the profits or in some other manner

Such associations would be very suitable for many public undertakings of a local character, such as water and gas works, coach establishments and other modes of conveyance, ferries, steam boat companies, &c They would in such cases afford opportunities of investment to persons of small capital, who, in those cases in which the business was carried on in their immediate neighbourhood, would be able to form some opinion of the chances of success It should be recollected that joint stock companies constitute almost the only mode of investment, other than the public funds, of which persons of small capital, who are not engaged in trade, can avail themselves Such persons may be able to bear the loss of the money invested, but it is indeed a serious calamity, when, under the system of unlimited liability, they are called on for further payments It is natural that they should wish to make the most of their small capital, and if,

* Code de Commerce, Art. 38.

in the hopes of obtaining a larger income, they choose to incur the risks of trade, it is highly desirable that they should be enabled to do so without incurring an unlimited liability.

There can be no objection to joint-stock companies constituted as they are at present, and it appears to me just and expedient that the liability of all the shareholders in such companies should be limited. They are similar to the French "societés anonymes," in which the business is conducted by directors and paid managers, whether shareholders in the company or not, who are elected by the proprietors and removable by them, but who are not responsible in any greater degree than the other shareholders. Such companies may answer very well for railroads, and for insurance and banking, or for any business of a routine character; but they will not be able to compete with those companies in which the managing partners have a more direct interest, as respects any undertaking of a more varied character, or which requires that constant attention and energy which individual interest alone can supply.

Experience has amply demonstrated that the present law has not kept either joint stock companies or ordinary partnerships from reckless trading. In the evidence given by William Hawes, who was opposed to partnerships "en commandite," he estimates the amount of insolvencies, bankruptcies, and compositions in England, from 1840 to 1847, as much exceeding £50,000,000 sterling per annum This estimate appears to be founded on the actual transactions of the Court of Bankruptcy, which he states to have paid dividends to the amount of £1,200,000 a year, on gross liabilities of about £8,000,000, being about three shillings in the pound; and he further states that it had been ascertained from the actual transactions of sixty or seventy of the largest firms in London, that the proportion of bankruptcies as respects compositions and assignment was about one to ten, and that the dividends received in the latter cases varied from five shillings to seven shillings in the pound Calculations founded on these data would raise the estimate of insolvencies to over £80,000,000 per annum, and the actual deficit to upwards of £50,000,000 And this calculation is stated by William Hawes not to include the disastrous year 1847, in one month of which the failure of twenty firms took place, the aggregate of whose liabilities has been estimated at between £9,000,000 and £10,000,000, and whose firms contained many of the first commercial names in London The world was surprised by learning the weakness of many whose solvency it had considered as indubitable, and by finding that business to such a vast extent had been carried on with such a disproportionate amount of capital.*

Joint-stock Companies have not been more prudent in this respect; but, on the contrary, the unlimited responsibility of the individual partners has, in several instances, enabled the directors to enlarge their business, and to contract engagements to an amount much beyond what their paid up capital would have justified The

* W. Hawes' Evidence, 793 to 796.

evidence given by James W. Gilbart, general manager of the London and Westminster Bank, before the Select Committee on Joint Stock Banks, in 1837, stated, in reference to assistance afforded by the London and Westminster to the Northern and Central Bank, to the extent of £150,000, that they had no knowledge of their mode of doing business; "that being satisfied of the wealth of the shareholders, and the ultimate solvency of the bank, they did not look more narrowly into the matter," and that if the shareholders had not been responsible, they would not have been so willing to trust them.* It is unnecessary to produce proof of a proposition so self-evident. No one can doubt that it was the knowledge possessed by the public of the unlimited liability of the shareholders, which enabled the Northern and Central Bank of England, the Agricultural and Commercial Bank of Ireland, and several other joint stock companies which might be enumerated, to incur liabilities to an unwarrantable extent, and which, although the public has ultimately been paid in full, has yet resulted in the ruin of many of those concerned, and in very serious losses to the solvent shareholders, who have been obliged to pay all the debts of the company. The solvent shareholders in the Agricultural and Commercial Bank of Ireland, in addition to losing their original investment of a pound a share, have been obliged to pay £2 1s. for the discharge of the liabilities In the St. George Steam Packet Company, another unfortunate concern, which was also ruined through the facilities for borrowing money which the unlimited responsibility of the proprietors gave to the directors, the loss has been £135 per share in addition to the £100 originally paid.

The evils which have resulted from the present system of unlimited liability in joint-stock companies do not prove that the contrary plan would have succeeded better; but it may be useful to bring them forward, nevertheless, because while every care has been taken to guard the public from the mischiefs which it might suffer from the reckless management of these companies, too little care has been bestowed as respects the mischiefs which such management has inflicted on the shareholders; and I am inclined to think, that the losses which have been sustained by the shareholders, and which have deprived hundreds of their property, have been even more disastrous in their effects on the community, than we could reasonably anticipate from joint stock banking companies with limited liability.

The differences now existing between the operative mechanics and their employers have engaged much of the public attention. Perhaps there has never been a contest of this kind in which such important interests were involved, or the long continuance of which would be more injurious to the general welfare of the community. The idea exists very generally among the working men, not only in the engineering, but also in other branches of manufacture, that they do not under the present system obtain their fair share, and that if they were able to unite their small capitals for carrying on those

* J. W. Gilbart's Evidence, 2012, 2013.

trades with which they are acquainted, they would secure both the wages of labour and the employer's profits; and thus, working for themselves, and no longer depending on the precarious support of daily wages, that they would place themselves in a safer, a more advantageous, and a more respectable position. The workmen may be wrong in this opinion; but that is no reason that they should not have every facility afforded them for making the experiment. J. Stuart Mill remarks on this subject, that "the liberty of association is not important solely for its examples of success, but fully as much so for the sake of attempts which would not succeed, but by their failure would give instruction more impressive than can be afforded by any thing short of actual experience."*

The liberty of association, the power to form partnerships among the workmen themselves, appears to me to be the best preservative against the evils of strikes, the best safety valve for the dissatisfaction which so widely exists as to the relations of employers and employed. If workmen think their wages insufficient, let them have every facility to club together and set up for themselves. If successful, they will prove the correctness of their ideas, and will deserve the improved position attained to. If unsuccessful, they will be better satisfied to work for an employer at daily wages.

At present, such establishments are impracticable. The principle of law which makes every person interested liable for the debts, gives him also the right of interference as respects the management. It is clear that such unlimited interference would prevent the profitable working of any business, in which many persons were concerned. Then, if the partners differ among themselves, they have no legal means of deciding, except by reference to the Court of Chancery; and before they can appeal to this tribunal, they must dissolve the partnership. If the workmen possessed the power of appointing two or three of their number as managers, who should have full authority, and be unlimitedly responsible for the engagements contracted by themselves, the rest being limited partners, then the experiment might be fairly tried.

Although such associations of workmen alone may prove failures, when tried by the fair test of mercantile success, other means may exist by which the interests of the employed may be identified with those of the employer. It appears to me particularly desirable that persons in business should be able to interest some of those in their employment, by paying them according to the profits of the concern, without at the same time giving them any right to interfere with the general management, or rendering them responsible to the public. It was stated to the Committee of the House of Commons, that this mode of remuneration was extensively practised in France; that the young men who thus receive a share of the profits, but are not partners, are called "interessés;" that in general they have a fixed salary, "and also a share in the profits;" that "there are few businesses in France where there are not one or two interessés," and

* Mill's Principles of Political Economy, vol 2, p. 468.

that "the system has answered remarkably well, making the young men very attentive and assiduous"*

Such an arrangement well deserves attention. It ought to be as useful here as in France. It seems to be applicable to all concerns in which any large amount of responsibility devolves on those employed in subordinate situations, as salesmen, general managers, overseers of workmen, &c. By interesting a larger number of persons in the welfare of the establishment, it increases the chances of success, and seems in some degree to offer a solution of the difficulties between employers and employed.

* T. Townsend's evidence, 441 to 456, 477, to 480.