SOCIAL INQUIRY SOCIETY OF IRELAND.

AN INQUIRY

AS TO THE

POLICY OF LIMITED LIABILITY

IN

PARTNERSHIPS.

BY HENRY COLLES,

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Subjects for investigation are not selected, nor are reports or essays received which involve the discussion of religious differences or party politics.

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The council propose to make public every report of sufficient importance which is prepared in a truthful and careful manner But the publication of a report or essay will not pledge the members of the society to the opinions contained in it, which must rest on the responsibility of the author, and will only express that, in the opinion of the Council, the report or essay is worthy of the attentive consideration of the public.

The annual subscription to the society is one pound; but larger sums are contributed by some members, such as two, three, five, twenty, and twenty-five pounds. Subscriptions are received by the Treasurer; the Secretaries; Mr M'GLASHAN, 50, Upper Sackville-street, and Messrs. WEBB AND CHAPMAN, 177, Great Brunswick-street.

AN INQUIRY,

&c.

To the Council of the Social Inquiry Society of Ireland.

GENTLEMEN,—In obedience to the request with which you have honored me, that I should "enquire and report on the laws of foreign countries with respect to partnerships of limited liability, and on the policy of allowing the general formation of such partnerships in the United Kingdom;" I have enquired into the matter so referred to me, and now lay before you the following Report as the result of that inquiry, and of the best consideration I have been able to give the subject. But I desire here to state that, from its extent and importance to all classes, and the value of the several topics bearing upon it, this subject would require and well repay a more searching enquiry, than the time or materials within my reach enabled me in this instance to make.

A clear exposition of the English law seems to me to be stated in Smith's Mercantile Law:—"According to the law of England, whenever two or more persons agree to combine property or labour, for the purpose of a common undertaking and the acquisition of a common profit, a partnership is considered to exist; any participation in profits will constitute a person receiving it a partner."

The English doctrine as to liability applied to all ordinary partnerships, exclusive of those formed under a charter from the crown, or under a private act of parliament, is that each partner is liable as respects third parties, strangers to the firm, for the whole debts and engagements of the partnership; not only to the amount of his share in the partnership stock, but to the whole amount of his separate property, to "his last acre and last shilling;" nor can any agreement amongst the partners limit this liability. Each partner is deemed the accredited agent of all the others, and at law has authority as such to bind them either by private contracts respecting the business and property of the firm, or by negotiable instruments circulated by him in the course of business in the name of the firm. Each partner is as much bound to fulfil to the utmost of his means any engagement entered into by his co-partners, as if he had entered into it himself.

The principle of unlimited liability extends to partners of every kind, whether active and ostensible, or dormant and secret; including all persons who have by their acts held themselves out, or permitted themselves to appear to parties contracting with the firm,

to be actual partners, though not actually entitled to a share of the profits.

The law of England forbids the formation, by the mere act of the parties, of a partnership with a limited liability; nor is there any mode by which the particular species of partnership which we are about to consider can be arrived at. The principle of a limited liability is not altogether unknown or new to our law. There has long existed the system of granting charters by the crown, for the formation of companies or partnerships; also the system lately so much acted upon, of forming companies under private acts of parliament: and we have the more recent instance of societies formed under the Friendly Societies Acts. In all these cases, the principle of a limited liability is admitted; but it extends equally to *all* the partners. These partnerships differ from the proposed species, in which the limitation of liability is conceded only to a PORTION of the partners. By the above means, companies can be formed in which the liability of partners is limited, so that creditors can look only to the partnership stock for payment of their demands.

The laws of foreign countries admit of a third species of partnership, viz. that in which a firm or company is composed of two separate classes of partners, 1st, one or more active or managing partners, called *gerants*, who are liable to the utmost extent of their means, and to whom is entrusted the management and administration of the affairs of the partnership, and of the capital stock; and, 2nd, *dormant* or *non-interfering partners*, who merely contribute to the stock or capital of the firm, and are called *commanditaires*, who are liable to third parties merely to the extent of the sums or portions of stock by them contributed, and who have no right to interfere in the management of the affairs or business of the firm; and this form of partnership is called a partnership "*en commandite.*"

The law permitting the formation of this species of partnership, has for some time been adopted with but little variation in most of the states on the Continent of Europe, and has been more generally extended since the framing of the Code Napoleon; and it is now a recognised principle of mercantile law in Belgium, Holland, Spain, and Portugal, and in the Papal and Neapolitan States. It has also been adopted, and is in operation in the United States of America. The provisions of the laws in this respect in America are to be found in the "Revised Statutes of the State of New York," whose system has been generally adopted in the other States; and for the purposes of this inquiry may be safely taken substantially to resemble that of the Continental nations. The main features are alike, and it will not be necessary for the purposes of this inquiry to consider the distinctive details of each system.

The principle permitting the formation of partnerships "with limited liability," was also recognized in an act of parliament peculiar to Ireland, viz. the act of the 21st and 22nd Geo. III. cap. 46,

Irish; subject, however, to stringent restrictions. This act is still in force, but its operation has been very limited. It will be necessary to mention hereafter its provisions and mode of operation. The species of partnership with a limited liability as to its inactive partners, known by the name of a partnership *en commandite*, coexists in the countries I have named with the species of partnership more generally known amongst us, in which *all* partners are necessarily liable without limit, and which is there known by the name of a partnership "*en nom collectif*." In America they are known respectively as "Special" and "General" partnerships.

The laws of foreign countries have adopted, as regards the proposed species of partnership, rules and provisions which it is necessary to state, in order to comprehend the nature of the partnership. Some of these were adopted from a very remote period; others are of later growth, suggested by the working of the system; a few are not common to all countries where this species of partnership exists; whilst most of them are of universal application. For the purpose of forming an accurate view of the distinction between the English and foreign systems (as they may be called), it will be necessary to mention such of those provisions as are most prominent and useful, and are common to all such countries as appear to have incorporated this form of partnership with their respective commercial systems.

A Commanditaire, or partner *en commandite*, is not held liable to creditors or claimants upon the firm beyond the amount of the capital which he has contributed, or engaged to contribute to the joint stock; or it may more accurately be said, that he is subject to no liability or responsibility at all. He has already invested a fixed ascertained sum in the concern, in return for which he is to receive a certain portion of the profits, and subsequently to be repaid the amount of his contribution to the capital stock of the firm, according to his agreement; subject of course to the continued solvency of the firm. To this claim of the Commanditaire, the private property of the "Gerant," or managing partner or partners, and the stock of the firm, are liable respectively, to their fullest extent. This claim of the Commanditaire is subject, however, in the first instance, to the just claim of creditors or strangers to the firm. The sum contributed by him may possibly be lost, but it has been already either actually invested or sufficiently secured to the capital of the firm, and there is no other debt or engagement of the firm to which the Commanditaire can be said to be liable. The Commanditaire is restricted from acting as a partner in dealings with third parties; he can take no part in the administration of the affairs of the firm, save giving his advice to the Gerant, or examining the books of the firm, or as agent of the Gerant. If he intermeddles with the business of the firm, or the administration of its affairs further than I have mentioned, he loses the advantage of his position as Commanditaire, and becomes liable to the same unlimited extent as the Gerant to all the

debts and engagements of the firm. Whether he thereby renders himself thenceforth liable, with the Gerant, to his former Co-Commanditaires, for the amount of their respective contributions, does not appear to be a settled question. What acts do or do not amount to such an interference on part of a Commanditaire, so as to affect his liability is also a question which gave rise to some discussion, and on which much difference of opinion existed. It has been, however, settled that a Commanditaire may deal with the firm on his own account, such as selling or hiring his own goods to the firm; and in some districts it has been decided that he may receive a fixed salary from the firm or Gerant, without incurring the penalty of an unlimited liability. The position of Commanditaires is one of a mixed character; that is to say, that while as between themselves and the Gerant they are creditors to him to the amount they have contributed or bound themselves to contribute to the joint stock; yet, as between themselves and third parties dealing with the firm, they are debtors to the amount of any unpaid stipulated advance. and can be compelled to fulfil their undertaking to contribute, to the extent of such portion as may remain unpaid, either by the Gerant while the firm is solvent, or by its creditors should it fail. The principles that have prevailed, and have been adopted in the French law on this subject, appear clearly stated by Mr. Bellenden Ker, in his valuable report presented to the Board of Trade on 1st March, 1837. He says, "the Commanditaire is not liable directly to any third person having a claim upon the society, even to the extent of the capital which, by contract with the partner responsible in solido, he engaged to contribute to the joint stock. The debts and engagements of the partnership are exclusively contracted by or in the name of the partner responsible in solido; and so long as he is solvent, the creditors or other claimants upon it must look to him alone for satisfaction. If the Commanditaire has not advanced the capital which he engaged to contribute, he may be compelled to advance it by the partners in solido, and may thus indirectly satisfy the partnership obligations. But the creditors or other claimants have no remedies directly against him, unless the partner in solido become bankrupt; on which event the joint stock (including the debts and outstanding contributions due to it) and the separate estate of the bankrupt partner (subject to such prior claims as his separate creditors may have upon it) are applied in satisfaction of the partnership obligations; so far as they are required for that purpose, or will extend to answer it. In the event of the bankruptcy of the firm, the joint stock, together with the separate estate applicable to the purpose, may and probably will not prove sufficient to satisfy the engagements of the firm. In such case, if the Commanditaire has advanced the capital which he engaged to contribute, and has not taken money or money's worth from the joint stock, the whole of that capital, as forming a part of that stock, is applied in liquidation of their obligations: but there his liability ends. In the same case, if he has

not advanced capital in pursuance of his engagement, or has taken money or money's worth, he is a debtor to the joint stock to the whole extent of what he has taken, and of what he has failed to advance; and the assignees in bankruptcy, or such other persons as represent the claimants upon the partnership, may proceed against him for this debt, as against any other debtor to the partnership estate. We have presumed that he is liable to account for whatever he has taken from the joint stock, even as his share of foregone profits; for he is obliged to bear the losses of the partnership to the extent of the capital which he has contributed, or is bound to contribute:—'*Jusqu'a concurrence des fonds qu'il a mis, ou a du mettre dans la societe.*" The terms of which obligation would not, it should seem, be satisfied if he were not compellable to refund. It may happen that the joint stock, together with the separate estate applicable to the purpose, is more than sufficient to satisfy the obligations of the society. In that case, the Commanditaire may resort to the joint stock and the separate estate for whatever was due to him at the bankruptcy, or the assignees may have obliged him to pay; but not in competition with creditors who are not also partners. In favour of their paramount claims, he is excluded from the fund till they are satisfied to the utmost farthing."

It does not, however, seem quite settled that the liability of the Commanditaire goes to the full extent, stated in the above abstract from the report of Mr. Bellenden Ker. There have been conflicting decisions and opinions given, as to his liability to account for whatever he has "*taken from* the joint stock as his share of the foregone profits." His liability in the partnership is properly described to have been restricted, as already stated, to the extent of the capital which he has contributed or is bound to contribute; but upon this phrase the French tribunals have put conflicting interpretations; it having been considered, on the one side, that the sums which the Commanditaire may have received as *profits* from the business must be taken into account and charged against him; and on the other side, that the account was to be confined simply to the sum which he had contracted to contribute, and that the profits received by him were not liable to be refunded, unless a case of fraud could be established against him. The latter interpretation is now regarded as the correct one, and seems to me to be much the sounder policy of law. The bringing into account profits at any time heretofore received, and perhaps long since applied to other purposes, is not only opening embarrassing and dangerous accounts, but recurring in a bad form to the principle of unlimited liability. By the Dutch law, it is specifically provided that no limited partner should be liable to any extent beyond the amount of his unpaid subscription. This has been found to work well in Holland, that prosperous and industrious country, whose commercial character stands high.

The restrictions which it has been deemed prudent to adopt for

the regulation and control of this class of partnership, are few and simple:—

1st.—The formation of the partuership must be evidenced by an instrument in writing.

2nd.—The public registration and the posting up for a certain period, in fixed places of common resort, of a statement of the names and addresses of the managing partners or "Gerants," and of the sum or sums which the other partners, the "Commanditaires," had contributed or had stipulated to contribute. Such statement to be posted in every arrondissement in which the partnership has a place of business, within 15 days after the execution of the contract of partnership, "otherwise such contract to be void as between the contracting parties, saving the rights of third parties having claims against the partnership or the joint stock."

The neglect and omission of thus publishing and posting are punishable under the provisions of the French criminal code.

The statement so to be made by the firm, as above referred to, does not, according to the French law, include the *names* of the Commanditaires; and the reason given for this omission is, that the credit is given not to the Commanditaires themselves, but to the funds by them contributed or secured. This I think would be better otherwise, and is otherwise in most of the American States. In Holland, where the principle of limited liability has worked well, not only in general commercial undertakings, but also in banking and insurance companies, they have adopted, for the prevention of fraud, this further provision, viz: the publishing annually of a balance sheet, and the obligation to pay up the full capital, (that is, all unpaid portions of contributions of the partners) 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.

Upon investigation, the rule as to the registry of the names of Commanditaires seems to vary, not only in different countries, but in different localities in the same country.

Such is a general outline of the present state of the law on this subject, as administered in foreign countries; and which has been adopted in America with some variations, amongst which the most prominent are, publishing the names of the Commanditaires, or, as there called, "special partners," as well as those of the Gerants, or, as there called, "general partners," together with their addresses, distinguishing each class. Another and more important provision peculiar to the American system is, that the contributions of Commanditaire or special partner, must be made in actual *cash* payments; instead of, as in the continental states, a security for their contribution, or a secret of trade or manufacture, or some other advantage in lieu of cash.

Upon a consideration of the entire subject of these partnerships, and upon an examination of the testimony of writers of experience and ability, and of witnesses examined from time to time on this

and analogous questions before committees of the House of Commons, connected in business with those countries where this species of partnership has been in full operation), I am led to the conclusion that the allowing the formation of this species of partnerships has worked well, and has been of advantage to the trading and commercial portions of the community; and in favour of the policy of allowing, under sufficient regulations, the general formation of such partnerships in our own country. To me it appears that its prohibition is an unwise interference with the free exercise of the judgment and discretion of parties desirous to invest a portion of their capital in trade; and is one of too many instances of an injurious restriction on the freedom of commercial enterprize.

But the first and most material enquiry now is, whether there are any *positive* benefits to the community, which may be reasonably expected to follow from allowing the formation of this species of partnership. I am convinced that there are; I am satisfied that the permission of this species of partnership would tend to the social and material benefit of the community, more immediately of the middle and working classes; by affording them an additional mode of investment of capital, where, with the exercise of a due degree of prudence and skill, a fair remuneration would be received; and at the same time, in many instances, their sympathies and interests would be enlisted in local improvements, engaging them conjointly with those somewhat above them in station, wealth, and intelligence, in common objects of general improvement, and ensuring their adherence to the stability of the institutions around them.. There are many undertakings and commercial enterprizes to the execution of which this species of partnership is peculiarly well suited, which in truth are now left wholly unaccomplished; prudent and cautious men with some property are unwilling to undertake them, under the penalty of an unlimited liability, and there exists great difficulty in providing sufficient capital for their accomplishment in the ordinary way; such as gas works, roads, bridges, water-works, public baths, lodging-houses, and other undertakings calculated to benefit a locality, and at the same time to return a fair and safe profit for the capital employed. Though there exists in these countries a superabundant amount of capital for great commercial enterprizes and vast speculations; yet it has often been found impossible to procure a sufficiency of capital for works of most useful though local character, even when offering a fair profit; and not being of a speculative character. There are many cautious and at the same time clever men, whose guidance and aid would prove most useful, and would have the best moral effect on their surrounding neighbours, who are now deterred by the fear of an unlimited liability; but would, were that removed, promptly take a useful and leading part in such local enterprizes or undertakings. Much capital of these countries, which now in small shares seeks employment abroad in foreign loans, foreign funds, and foreign speculations, would, if freed from the risk of an

unlimited liability, be expended with profit and advantage at home. Such a mode of investment, if opened to the middle classes and small capitalists in connection with a higher class, would tend greatly to unite the different ranks of the community engaged in commercial and manufacturing pursuits, would lessen the breaches between the employers and employed, and would aid to supply the grades necessary to fill up the gaps that exist between the working classes and the capitalists. The present state of the law is favourable to the larger capitalists, strengthens their monopoly, and creates or rather increases and continues a gulf between capital and labour. It keeps separate and apart the interests of the working and saving classes and those of the capitalists, between whom there should be identity of interest. Why should not the class who possess capital, of which there is a superabundance in the country, be permitted (if so inclined, as they are in many instances,) to unite with and aid the class which consists of active, clever, and ingenious men, and render more available that activity, ability, and ingenuity, without the risk of unlimited liability—or, in other words, the risk of utter ruin?

The exclusion of this species of partnership has daily, in numerous instances, the effect of preventing wealthy members of firms, on their retirement from business, from leaving a portion of their capital in the house in the hands of some of their former junior partners or employées, whose character and ability they could trust to carry on the business. It also prevents the man of some spare capital assisting the acquaintance or friend, on whom he could rely for the safety and probable increase of the property of both. It prevents the combination of small capitals, which might otherwise take place if the formation of partnerships with limited liability were permitted. There is no doubt that (however inconsistent with the feelings and views which have grown up and been fostered in the minds of the middle and working classes, under our system and administration of commercial law) the interests of the different classes of society are identical; and that any system which breaks down, or aids to break down to any extent, the wall of partition between them, confers a benefit on the whole community. This result can be arrived at, with advantage, only by one course, viz. by raising the condition and prospects of the working and middle classes; or rather, giving them a power and a hope of raising themselves. The absence of hope and motive which now exists in the minds of too many of the lower classes, when viewing their present condition, and the relationship between themselves and their employers, the capitalists; and the difficulties which the middle classes find in the way of their material and permanent advancement; lead often to great discontent, and to much most mischievous because misdirected activity. The advantages of affording the proposed species of investment to the middle classes and small capitalists are very considerable. No one acquainted with the habits and mode of thinking of these classes, can be ignorant of the great preference and

desire they feel for investment in matters of which they are themselves cognizant, and which they can look upon as real, such as buildings, water works and gas works, canals, and other works which they can from time to time see. When to this is added the interest they are sure to feel in works over which they exercise some control, partly by electing for the management persons whom they know and trust; partly by being themselves associated with those to whom they look up; the adoption of this mode of investments would be not only highly prized, but of great value to the moral as well as material condition of the people.

It has appeared to some persons who have considered this matter, to be at the best a very questionable benefit to offer to the middle classes of society, as an additional mode of investment, the power of investing in commercial undertakings or local works of the nature I have mentioned, on the ground that the *security* of the investment is a matter of more importance to these classes than the *rate of profit*. This objection does not appear to me to hold good; for though the principle is perfectly correct, that the security of an investment is the most important consideration for small capitalists; nay the poorer the man is, the more important the safety of his investment becomes; I say, in the first place, that an investment in a firm trading under a limited liability is more secure than in a firm trading under an unlimited liability; and, secondly, there are numerous classes of undertakings such as I have mentioned, and other commercial enterprizes, which would offer at least as safe and secure an investment as many that are now sanctioned by our law, and far more so than many modes of investment that these classes resort to in their anxiety for a limited liability—investing their capitals in shares in foreign countries, or in more hazardous speculations at home; hazardous not only in their own nature, but also because the operation of the principle of unlimited liability prevents persons of wealth and position, but at the same time of prudence and caution, from becoming partners, and aiding in their management. Why should not men of small capital be permitted to trade and form companies, for the purpose of carrying on undertakings of a useful, practical, local nature, in the safest manner under a limited liability, associated by their own voluntary act, with full and perfect notice to the public as to all matters in which it is the interest of the public to be informed? In many most useful untertakings, to tell men they must seek for a charter, or for an Act of Parliament, is to say, "abandon your undertaking." Instance the Model Lodging Houses Association for the working classes in London, who were forced to seek for a charter which cost £1,200. The question then becomes, is it for the benefit of the public that such undertakings should be abandoned, or be carried on under a system of imprudence and incaution, or be confined entirely to large capitalists? It is surely a want of prudence or caution for a man, with a capital varying from £200 to £2000, to embark in a firm or undertaking whose requisite working

capital may be £12,000 or £15,000, and whose business is carried on under the principle of an *unlimited* liability. These men must trade subject to this too great risk; and, associated with incautious men, make themselves responsible for an indefinite amount, often without any share in the management of the enterprize; or be driven to the slow, and expensive, and most frequently fruitless efforts to obtain a charter, or act of parliament, to effect that which a more liberal state of the law would enable them to effect for themselves, by their own voluntary act. Nor does it seem to me that there would be any great difficulty in framing provisions, which would guarantee to the public, or parties dealing with such firms, sufficient security, by an efficient registration of names, amounts of contributions, and transfer of shares; restricting within bounds and limits such transfer of shares, and continuing the liability of partners for a sufficient time after such transfer; also a full and sufficient publicity of all matters necessary for public information respecting the capital, or additional issue of capital, and having a sufficient portion of the capital paid up; and rendering, within proper limits, yearly or half-yearly balance sheets accessible. That such a degree of publicity, or means of general information, is not distasteful to the great mass of people desirous to contribute a portion of capital to commercial undertakings, nor inconsistent with any number or amount of such undertakings, or with any variety as to their nature and character, is sufficiently evinced by the immense number and variety of private acts of parliament, in which a compliance with similar requisites is enforced, that have been placed on the statute book within the last ten years.

The desire for this species of investment is not, however, confined to the middle classes or to small capitalists. The large capitalists have been frequently prevented employing a portion of their capital as they would have wished, viz. by leaving a portion of it in business with those whom they could trust, and with whose habits and character they were acquainted, either from having employed them, or from any other connection in business, and whom they could guide with their advice; they have also desired to make investments in undertakings which they wished to see completed, and which would lead to local improvements; and to aid those in whose success they are interested either by friendship or connection: but they have been prevented by "unlimited liability" Nor are the works and undertakings to which this principle has been advantageously applied been small and unimportant; instance the efforts made in Holland, where, within a short period, and in small locality, 2000 or 3000 acres have been gained from the Scheldt; and similar works are carried on every day, embanking, draining, and reclaiming land to a very considerable extent. In that country and in Belgium they also successfully apply the principle of limited liability to the formation of companies for supplying the towns with water, and building bridges, lodging-houses, and even

houses of refuge for the poor; which, by means of associations formed with a limited liability, are carried on at comparatively little expense, and with great advantage to the associations, and relief to the poor. We see also large public works and collieries worked throughout the kingdom of Belgium by similar associations. There are numerous instances in our own countries, where persons would have been desirous to form and enter into partnerships for the extraction of stones, coal, iron, and slates from lands in which they were interested, but were deterred by the dread of an unlimited liability. But the instances of the successful application of the principle are more numerous and diversified in America than elsewhere. In truth, there seems scarcely any form of undertaking, commercial or manufacturing enterprize, or works for local improvements, which have not been successfully completed by this class of associations in America. And the benefit of it has not been confined to profitable remuneration for the outlay, but has extended to the great improvement of the habits, feelings, and contentment as well as wealth of the contributors, and of the people in general. And not only so, but we find that in very many instances the money of our own people has been forwarded to America as well as to the Continent, and there invested in undertakings and commercial enterprizes under a limited liability; which money, had the same principle been permitted in these countries, would have been spent here, and the advantages of the success of the undertakings been secured to our own country, not only in the shape of profit, but also of moral improvement.

A further benefit to the general condition of the community, which would actually arise from the adoption of the principle of a limited liability, would be to add to the number and usefulness of *inventions;* for though it be perfectly true as a general statement, that there is no want of capital in Great Britain, yet there does often exist a great difficulty in obtaining it for, or rather in applying it to the purpose of, forwarding and perfecting inventions, and rendering them of value to the originators and the public. There are many instances of working men engaged in arts and manufactures who possess great natural mechanical or inventive powers; whose minds and habits are peculiarly calculated to make discoveries of useful inventions in their respective departments, and whom many prudent and cautious men would be willing to assist with the aid of capital to a limited extent, by joining in a society or partnership for the purpose of working out and perfecting inventions; but who are deterred by the risk of an unlimited liability. Many an excellent invention is now lost to the inventor for want of capital to carry it out; but which would otherwise enrich him, and benefit the community at large. It appears, from the testimony of commercial men of experience, that a person with some capital would be much more willing to invest a small share of it for such a purpose, by the means of a partnership with a limited liability, than to advance it by way of

loan. Capitalists are frequently willing to advance a small share of capital, in the shape of contribution to a joint stock of such a partnership with a person engaged in arts or manufacture, whose ingenuity and natural ability, aided by his peculiar experience, have led to the discovery of a valuable invention or secret, and of whose ability and integrity such capitalist has sufficient knowledge; and yet to whom the capitalist would be unwilling to make an advance by way of loan. How far this preference for the former mode of assistance arises from financial or commercial causes, and how far from the preference so generally given to embark in speculation, it would be useless here to enquire; but this we know, that the rendering of aid by joining such a partnership, is more beneficial to the party assisted, to the creditors of the firm, and to the public, than by making an advance by way of loan. The advance by loan would not be at all an equal benefit to the inventor. This was clearly stated by Mr. Hewell, a witness of great experience and high character in the commercial world, when examined on this matter; whose testimony is sustained by that of others to the same purport:—

"The joining in a limited partnership would be infinitely more beneficial to the young man who is to be assisted, because a man beginning entirely with borrowed capital, according to the rules of trade, is entitled to no credit. He is a dangerous customer, if he borrows money which can be called from him at any time, when the lender begins to be fearful, or when, for his own purposes, the lender requires it; whereas, if the lender becomes a partner *en commandite*, he gives it then for a certain period; he cannot withdraw it; and that capital is absolutely liable to the creditors who trust him. Whereas the borrowed money would not be liable, and in the event of failure, would be proved as a debt on the estate, in diminution of the dividend, and to the injury of other creditors." See the condition of the inventor. If he be, as happens in ninety-nine cases out of a hundred, a poor man, he cannot himself give security for a loan; in the way of advance no one is willing to assist him; it is in vain he applies to a capitalist to lend at any rate of interest; it is quite foreign to our notions and to our habits of business to advance money on loan under such circumstances. But if, by the alteration of the laws, a capitalist, knowing the character and ability of the inventor, and capable of forming an opinion of the invention, could join him, and take an interest in the matter and share the profits, while the liability was confined to the sum originally embarked, there is no doubt that he would get assistance from capitalists. As the law now stands, there is no class amongst whom more hardship, and, in fact, injustice is experienced, than inventors or proprietors of patented inventions. The result of this present difficulty is, that their invention frequently remains valueless, and is often filched from them altogether. In this matter the public are also interested as well as the inventor, by its opening a field of investment for capital productive

of profit to those engaged; while, by the encouragement to improvement and advance, it tends to the general benefit of the community.

There is a third benefit to be derived, (and I know of none greater, which could be conferred on a community) from the introduction of this species of partnership with a limited liability. I mean, an improvement in the principle on which credit is given for commercial purposes, and the extent thereof measured, to persons or companies engaged in trade.

Where companies are formed with an unlimited liability, and credit in the ordinary course of trade is required, the credit is not given on the ground of an ascertained or calculated amount of capital or stock, (which, under proper regulations, might always be ascertained;) but on the supposed amount of the separate property of certain individual members of the firm. The history of the innumerable cases of reckless trading on credit, by parties who had obtained the names of men, either of great actual or reputed wealth, will show how the principle of an unlimited liability leads frequently to the ruin of individuals—a ruin of which they, having often little or no control in the administration of the affairs of the firm, are as irresponsible for the cause as they are impotent to avert the result; but yet whose entire property is swallowed up, in a vain endeavour to meet the engagements of the firm. At other times it leads to the ruin of creditors, whose calculations on the amount of property liable to their demands turn out erroneous; and who are ousted of their debts either by prior and to them unknown claims, or by the non-existence of property to the extent they calculated upon. And a few reckless and fraudulent adventurers, by including in a project the names of two or three men of real or reputed wealth (who have in many instances been clever enough to indemnify themselves), have had it in their power to ruin their partners, or plunder their creditors, and often to do both.

Mr. J. M. Ludlow, a witness of high authority, having in his evidence before the Committee of the House of Commons in 1850, "on investments for savings of the middle and working classes," stated that he considered a false credit is produced or arises out of the present practice with reference to unlimited liability, viz,—where a partnership is trusted not on account of its capital, but on account of a few rich partners who belong to it, states, "That the true credit of a partnership should always be that attributed to the prudence of its management, to the known amount of its capital, the state of its funds altogether, and its half-yearly or yearly balance sheet; and the false credit of such a partnership would be that attributed not to the management, not to the actual capital, but to the individual fortune of this or that shareholder, whom the creditors would always be sure to get at by an action at law by reason of his unlimited responsibility. If such things continued to be done under limited liability, the creditor would have no one

to blame but himself; and therefore I also think that limited liability will tend to produce, in a great measure, prudence and caution in management, and, I would add, in investing capital by joining a partnership." There can be little doubt that parties dealing with a company or partnership, would be in a much safer position in dealing where there is a paid-up capital, with means of ascertaining the names of the contributors and the respective amounts of their contributions, than when trusting to a vague though unlimited liability of shareholders; not only whose property may greatly vary from time to time in amount, but who themselves may be a fluctuating body. And not only may injustice and fraud be committed against innocent creditors, but, under the system of unlimited liability, dishonest creditors, combining with dishonest directors, may successfully commit fraud and wrong upon innocent shareholders. The records of the Bankrupt Court,—indeed, a slight knowledge of its current proceedings, amply disclose that in many cases of large trading, followed by a "great crash," extensive and mischievous credit has been given to companies trading with unlimited liability; when, to the full knowledge of the creditor, the capital stock of the firm was insolvent; when he had full knowledge, from the nature of the very securities tendered to him, and the character of the paper presented to him for discount, for the purpose of raising a loan, that his real security was the separate and private property of individual shareholders; and when he found, from the nature of the transaction itself, that much of the capital of the firm was applied to improper purposes; and this was doing while the parties whose whole fortunes were involved, and whose ruin was the probable consequence of the continuance of such proceedings, were wholly ignorant, and often had no means of knowing the terms on which loans were raised from time to time, and how capital was applied. And the temptation to the lender or creditor to continue such transactions is very great; for the worse the character of the paper, the greater the amount of discount, and the higher the rate of interest. And when the capital of a joint-stock company, with an unlimited liability, becomes involved, the directors or managers go to a class of dealers suited to their purpose, who will not strictly inquire as to the manner in which the business is conducted, or whether it is honest or dishonest; but will most carefully scrutinize the share list, and trusting in the fullest confidence to our law of unlimited liability, encourage these discounts, and thus ruin is often drawn on by the facility of credit. Instance, amongst many others, the case of the North of England Bank, stated to the Committee on the Law of Partnership, who on a captal of £150,000 incurred liabilities to the amount of upwards of £2,000,000; there are many instances where banks continue discounting and rediscounting the same paper over and over again, long after they were well aware that the whole dealing was a transaction of "kites;" that the business of the firm must be carrying on badly and improperly, if not dis-

honestly. Nor does it appear to me that it is any answer to say that these parties are persons well aware of the state of the law, and should have protected themselves and controlled their co-partners; for it often happens that it is utterly out of their power to do either one or the other. The conclusion I wish to draw from these facts is, not that the species of partnership with unlimited liability should be abolished; but it does seem to me to follow, that that system does not protect creditors from fraud and plunder, and does not prevent the occurrence of that great bugbear, over-trading, and those other evils which are, in the minds of some men, to be apprehended as likely to follow the introduction of the system of partnership *en commandite*.

There is another matter which is now gaining a great deal of public attention, which has obtained much consideration from those engaged and interested in the welfare and progress of the middle and lower classes, and on which some difference of opinion exists, viz. "Industrial Associations;" I mean the association of men who combine small amounts of capital, and their own labour, for the purpose of carrying on their trade, and producing articles within the range of their business and selling them for a common benefit, dividing the profits according to a fixed proportion. This has been tried, with various degrees of success, in different trades and in different localities; the desire for such associations has taken strong hold of the minds of those classes; and their prevention is by them looked upon as an injustice. The policy of their adoption is in my mind worse than doubtful, and their eventual success very problematical; but that is not the question here. Whatever difference of opinion exists as to the soundness of the views of these classes themselves, the great preponderance of opinion is in favour of granting the power of making the trial, and that the experiment should be left open to be made by those who are most deeply and directly interested in the matter; that if those views of the people are chimerical, they should be taught so, but that they can be usefully taught so only by experience. Sufficient evidence is certainly before us, to show that the working, mercantile, and manufacturing public mind is disturbed on this question, and that it would be most desirable that it should be settled; that no settlement can be final or satisfactory to the people, unless it receives what in their minds is a fair trial. It is not within the scope of this inquiry to discuss the policy of these associations; but it is sufficient to state that, as the law of partnership now stands, such trial cannot be made, such combinations or associations cannot now be formed. If a body of workmen so associate together, the law regards them as partners, and as such renders each of them liable for the engagements of the others; and encumbers them with other difficulties arising from the defective state of our partnership law, both as to preventing fraud and settling disputes amongst themselves. The impossibility of attempting this mode of better-

ing their condition is regarded by these classes as unequal and unjust. The more wealthy can combine either by charter or private acts, the expense of which is a bar to those with small amounts of capital, but who might, with safety to themselves and the public, effect their own object by the admission of the principle of partnership *en commandite*, with proper restrictions. The present state of the law says to the small capitalists, not that we find it necessary and politic to exclude the formation of partnerships with limited liability; but that they must be confined to those classes who can command influence enough to procure a charter, or wealth enough to defray the expense of private acts of parliament.

In connection with this, there is another class of undertakings which at present excite much interest, and from which much benefit is anticipated, such as washhouses, bath houses, mills and provision shops, dwelling and model lodging houses, bakehouses, which, in many instances, proprietors interested for the welfare of a district would be willing to take shares, and thereby, in proportion to their means or their desire to do good, contribute to undertakings which they felt would confer a benefit, and the working of which they could partly control, and which would in almost every instance yield a fair and moderate interest by way of profit. And this return would be doubly useful, not merely by yielding to the contributors a profit for their outlay, but by enabling them to contribute more largely to undertakings of this character. If to the outlay necessary for the fair and sufficient establishment of their undertakings, is to be added an unprofitable outlay of £1200 or £1400 for a charter, or a like or greater sum for an act of parliament, it throws a serious and most unmeaning difficulty in the way of useful and valuable investment. The question, I apprehend, has now become, not whether the experiment of industrial associations may be tried, because tried they will be; but whether they shall be tried under sound regulation, and with the best safeguards. If the law be not remedied, they will work evil and not good; fraud will be committed, injustice inflicted, and, still more, the people will be more alienated from the law and the institutions of the country; believing as they do, and as they daily are taught, that it is within the power of the legislature to give the opportunity of making what they consider most desirable efforts to better their condition, and to provide whatever might be necessary for their protection, giving them security against fraud; accessible tribunals for their differences, and a limited liability.

Such are some of the more prominent benefits that may reasonably be expected by the formation of partnerships with limited liability. But the law of England says that this is not to be so; that though parties may desire to make this contract with each other, and publish to the rest of the community the terms on which they desire to deal, and the extent to which they seek credit for the purposes of the undertaking, so that no one need be

damnified or even endangered; yet they must not do so; "lawyers are better authorities as to the expediency of your dealings; and though you may have wisdom and experience enough to decide upon all other matters, you shall make a trading contract only on the terms lawyers think best. And not only so, but the law says, if "you make any other contracts, they shall be construed into this one form; that use what terms you may, they shall have but this one meaning." Surely this is not the function of law. The law should ascertain what contracts have been made, and then enforce them, if not against morals or public policy. And thus this judge-made law, founded originally in great ignorance, has continued to control and check many undertakings and contracts in this country. That the original decision, establishing the principle of an unlimited liability, rested in ignorance, will be clear to any one at all acquainted with the rudiments of political economy, or even with the ordinary course of dealing between commercial men, and who reads the judgment on which this general rule has been built, viz. that of Waugh v. Carver and another, 2 Henry Blackstone's Reports, 235; which is founded on the notion of the judge that he who takes a share of *all* profits indefinitely, shall by operation of law be made liable to losses, to a similar extent, if losses arise; upon the principle that by taking a part of the profits, he takes from the creditors a part of that fund which is the security of their debt." It is well known that creditors neither can nor do look to profits as a security or fund for the payment of their debts. In fact, profits cannot exist till the debts are paid. Moreover, the principle is inequitable and inapplicable. A party contracts with others competent to make such contract, for a *proportion* of *profits*, in consideration of his incurring a *proportionate* amount of *risk*, viz. to the extent of his contribution. Yet though he may have given full public notice of the nature of his contract, and the extent to which alone he seeks credit and undertakes to be bound; and so have put all third parties upon their guard, and given them the means of self-protection; yet he is to be bound to creditors to an unlimited extent: and, as often has happened, while his profits turned out to be nought, his liabilities may have been extended to £20,000 or £30,000.

But let us now see what has been the result of this unbending rule. Freedom of contract has been interfered with; parties, whose co-operation would have been both morally and materially useful, have been kept asunder; useful local improvements and institutions have been prohibited, and much probable if not certain good been prevented. It is but fair to ask Unlimited Liability, "What have *you* done for the commercial prosperity of these countries? Have all the apprehended evils been prevented? Has the great bug-bear, 'overtrading,' been avoided, and have delusive speculations been banished? Have men and companies been protected from their own rashness and folly. Without appeal to

parliamentary returns, we have sufficient evidence to enable us to form an opinion on this subject, and give a clue to the extent of the amounts involved in the annual insolvencies and bankruptcies of England. We find that "the deficit in the assets, as compared with the liabilities of those who were in difficulties, exceeded, from the year 1840 to 1847, £50,000,000. The amount paid in dividends in latter years is about £1,200,000, representing about £8,000,000 of liabilities, including compositions and assignments for creditors, the dividends in bankruptcy being only about three shillings in the pound. There were twenty-two bankruptcies in 1841, which amounted to between £4,000,000 and £5,000,000. The English North County Bank, with a capital of £149,000, closed with liabilities to the amount of £2,000,000. It is not necessary, neither would it be possible, here to discuss how far the entire or what portion of this overtrading and reckless credit can be traced to the principle of unlimited liability. It is sufficient to sustain fully the proposition, that that principle afforded no check or protection, save that in some instances, where the proprietory were individually very wealthy, the public, or rather creditors, were saved and the proprietors ruined. When we peruse, amongst the statements of the daily occurrences passing around us, the records of proceedings in the courts of equity, and of bankruptcy and insolvency, and see the small amount of actual capital and the vast extent of credit which co-existed in many cases; the extensive loss that has followed; the total ruin that has been caused; the extent to which fraud has been carried by parties obtaining the use of the names of a few men of wealth or of reputed wealth; it cannot be said that the unswerving adherence to the principle of unlimited liability has had the effect of preventing or even checking fraud, or of opposing any difficulty to desperate gambling in the way of trade.

It seems difficult to conceive that the adoption, under proper regulations, of the principle of limited instead of unlimited liabilities, would not tend to increase security and prevent fraud; that it would not give greater facility for investment, increase the safety of the capital invested, and tend to place the system of credit on a sound footing; not resting on a vague notion of the actual or supposed wealth or capital of individual members; but on a sound opinion as to the solvency of the firm, formed on sound information accessible to those from whom credit is sought. It has been put forward, by some opponents of the principle of limited liability, that most of the benefits anticipated would be arrived at by the change in the usury laws; and that parties could now lend money to a partnership, with such a rate of interest as they might agree upon, proportioned to the rate of profits. But it should not be forgotten that a great advantage to the public and to the creditors of a firm, which the principle of a limited liability has over the system of a capitalist lending money on interest, is the different position which the parties lending the

money hold as regards third parties. In the case of a partnership *en commandite* the creditors of the firm have a priority over the partners *en commandite*, and can establish their demands against the joint stock; including the contribution of the commanditaire, who must stand by till all the *bona fide* creditors are satisfied, and, if necessary, must lose all his share for their benefit; while in the case of advance by way of loan, the party advancing the capital or loan takes his stand with the other creditors, and claims in equal priority with them for the amount of his loan and interest. Many of those who have opposed the adoption of the principle of a limited liability, including some whose name and authority stand deservedly high, have yet, though to some extent unintentionally, borne testimony to its value, and to their dissatisfaction with the present state of the law, by strongly recommending a great extension and facilitating of the system of the grants of charters by the crown, and of passing private acts of parliament, and the passing of general and periodical enactments, authorizing by classes undertakings and partnerships with *limited* liability. But while they thus recognise the value of the principle, they would place the power of adopting it in the wrong hands, viz. those of the government, or some government board, instead of the parties themselves, with a free use of their own judgment in their own cases. And not only is the discretion placed in wrong hands, but such a system, no matter in whose hands the administration is intrusted, must often work out injustice; for unless they grant charters to all companies or associations, they will give to some, viz., those to whom they concede the privilege, a great advantage over others; unfairly placing the latter in a position of inequality, and causing dissatisfaction, jealousy, and injury.

Have not the public borne testimony in favour of limited liability, and the value they set on it? See the efforts made by a large number of the trading community, and also by others seeking for investment, to obtain the benefit of the principle of limited liability; those of a high position, or sufficient influence, seeking a charter from the crown; others making, at an enormous expense, applications to the House of Commons for acts of incorporation. See, also, companies who enjoy the benefit of a limited liability, putting forth that fact as an inducement to parties who may wish either to deal with or join the co-partnership; shewing, as strongly as acts can shew, that not only they themselves consider, but that they are aware that the public consider that it is safer to trade under a limited than an unlimited liability. We have also that large and important class of companies, the Insurance Companies, who practically work out a limited liability; the claimants having only a right to look to the joint stock or capital of the firm. These companies decline to carry on business on any other terms. It is, in my mind, difficult to understand why the great delay and inconvenience, and great expense of obtaining a charter or act of

parliament, should be put in the way of people desiring to trade with a limited liability; and why the discretion of applying that principle should be placed, not in the hands of those most interested to form an opinion as to its fitness and desirableness for their own purposes—but with those who are little likely to feel much interest, or be very competent to judge; and the exercise of whose discretion seems to have been guided very much by the wealth, position, or influence of the applicants. The system adopted amongst us seems in many particulars devised for the purpose of mystification, with sleeping partners represented by the talismanic word "Co.," which can stand for any number of partners or any amount of capital, or with equal facility represent the absence of both partners and capital—the practice of holding forth to the public the names of partners whose connection with the firm has long since wholly ceased, and of carrying on business in the name of a firm whose original existence, both collectively and individually, has long since ceased to be amongst the things that are.

I would now, even at the risk of extending this paper, already too long, beyond the limits you might desire, wish to say a few words as to the objections that have been made to the permission by our law of the formation of partnerships with limited liability. And though some of these objections have been put forward by men whose names are authority in themselves, and whose opinions have deservedly great weight with the public, yet many of them will on examination be found to apply merely to some matter of detail in the particular system of commandite in foreign countries with which the objector happens to be most familiar; and in some instances more to a dread of change, than to a well-founded conviction of the soundness of the principle of our law in this respect. For instance, Mr. W. Harris, in his reply to the Committee of 1851, having stated his opinion that our present law of partnership does not work an injustice to the small capitalists, when the chairman of the committee put to him the case of an undertaking for works of local improvement returning a fair profit, gets rid of the difficulty of the expediency of a number of small capitalists joining, by answering "that in such case they would obtain a charter or act;" that is, they would obtain the advantage of the principle of a limited liability, at expense, delay, and inconvenience, provided they could pay sufficiently for it. The same witness, again, when questioned as to the unfairness of visiting a trader with indefinite loss, where he can obtain profits only to a certain amount, says, "when speaking of indefinite losses, you must not forget that such losses, whatever they may amount to, are the result of the misemployment either of his credit or capital by himself or his agents." Now this is wholly forgetting the distinctive feature of the thing he was speaking of; that the Commanditaire cannot himself interfere in the administration of the affairs of the firm, and that the Gerant, though an agent, is such only for a limited purpose and to a limited extent, viz. to the ex-

tent of the capital subscribed. To that amount of capital and credit alone is he entrusted, and his "misemployment or mismanagement" cannot be brought to the charge of his principal, the Commanditaire. Neither does it seem very sound of the witness to object, "that a man should not trade and obtain profits, and throw his losses upon other and innocent parties." The man says he desires to trade to a limited extent, and he tells the public so, say to the extent of £500—that he is willing to trade and to risk that amount on the chance of a proportionate share of the profits that it may return; and to that extent, if necessary, he must bear the loss. In addition to these and similar objections, there are many persons, who, like all opponents to reform, say, "the present system may be bad, but change might be worse."

There is one name, of great character appearing amongst the opponents to the principle of limited liability, viz., that of Mr. Bellenden Ker, a name which deservedly has great weight, not only on its own account, but because his view is stated to have altered the opinion of one who has at all times shewn a deep interest in the welfare of the great masses of the people, and whose consummate ability and great energies have done much for the moral and intellectual advancement of his fellow-men, one to whom the people of England owe a deep debt of gratitude—I mean Lord Brougham. But, upon a close examination of Mr. Ker's evidence given before the Committee on the Savings of the Middle and Working Classes, much more reason will be found for the suggested change in the law, than an adherence to our present system. He considers that there are many undertakings to which a limited liability would be advantageous, and to which it should be extended; that charters and acts of parliament are amongst the aristocratic privileges; and, when pressed as to the expediency of the adoption of limited liability for certain purposes, such as those of local enterprise, and in which the object may be some public benefit near to the parties, he frankly states what clearly accounts for some of his views:—"I consider myself as in attendance on this committee principally for the purpose of stating my opinion of the law, [meaning, as he must, as to what the law now is;] I am not a *political economist*, and, therefore, I rather conceive that every member of this committee would be a far better judge as to the *policy* of the law than I can be." And though he expresses his opinion that the best investment for the middle classes is the three per cent consols, he yet states, "Upon the expediency of providing this mode of investment, or the other, for the poor and middle classes, I have little knowledge. This is a subject that I have considered very little, and cannot know so well as every member of this committee." And, like a lawyer, Mr. Ker dreads an alteration of the law, particularly on a subject "on which the law has been so long and so completely settled."

An instance is brought forward in Mr. Ker's evidence, viz. that of turnpike bonds. But this instance is in no way analogous to partnerships *en commandite*, as the system of turnpike bonds wants all the distinctive features of the system of commandite. There being in the former no power of self-government, it does not appear to me in any way to apply. Did the limits of this paper admit, it could easily be shown that, taking Mr Ker's evidence, and his able report made to the Board of Trade in 1837, the views taken by him inevitably lead to the conclusion, that the system of limited liability would be much more consonant with his views than the contrary principle; save that he thinks the discretion as to its applicability should be in the hands of some government board, and not vested in the parties themselves. Surely, it requires but little experience or reading of the working of such institutions, to convince one that a government board is the worst of all instruments of interference with the management by people of their own affairs. Mr. Ker also considers, and justly, that the alteration in the usury laws has done much to lessen the evils and difficulties which stood in the way of partnerships borrowing money. I have carefully perused the replies and communications made by very able and experienced men, as Lord Overstone, Mr. Larpent, Mr. Horseley Palmer, &c, whose minds have arrived at the conclusion against partnerships with a limited liability; but though it would be impossible in this paper to enter into discussions of each of their views, most of the difficulties seem to be those of detail, and most of the objections to be vague apprehensions of change, and of a want of sufficiently trustworthy prudence on the part of the people. The argument against the expediency of the adoption of a limited liability, on the ground of the vast quantity of capital to be easily obtained in England, seems to me to tell the other way. When one finds £300,000,000 rapidly subscribed for railways with limited liability, and a superabundance of capital existing, and getting only two and a-half or three per cent, while still a large amount of capital seeks an investment abroad; an additional mode of investment, which, while it would lead to local improvement, to the advance of inventions, to the contentment, and in many instances welfare of large classes of the people, offers the fairest prospects of an adequate return, would be no small benefit to the community.

The Irish Anonymous Partnership Act has been mentioned as a law, the operations under which have been very limited and not very encouraging. Mr. Jonathan Pim, in a valuable paper read this session before the Dublin Statistical Society,* has given us some interesting information respecting this Act. It seems from returns collected by him that the number of partnerships formed under the provisions of this law have been as follows:—

* On Partnerships of Limited Liability.

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

Being little more than an average of seven annually, and only twelve partnerships during the last eleven years. It may very fairly be asked, why, if the principle of a liability was valuable, was it not made available under this Act?

And the answer is, I think, contained in the Act itself, which interferes imperatively in the matters which parties most desire to have left under their own discretion. One is, as to the amount of capital, which must not be less than £1000, and must not exceed £50,000. But another and more important restriction is, that the partners may only draw out half their profits on each settlement of accounts, the remaining half being retained as a security against loss or to meet liabilities. The mode in which the payment of the shares or contributions to the capital stock must be made, is also such as would prevent its applicability to many purposes. Much is also owing to the state of society during the latter portion of the time mentioned in the table above stated *

A most important consideration, which calls for strict attention before any conclusion on this question could be fairly and satisfactorily arrived at, is, whether it is possible to frame such a law as would permit the formation of this species of partnership, with sufficient safeguards against frauds amongst the partners *inter se*, and sufficient provisions for the security of the public and the creditors; and at the same time without risk of creating confusion, or causing any collision between the new and the old state of the law. And at first, I considered it would form a necessary part of the duty of a person treating upon this subject, to suggest and draw out such a proposed law; but, on further consideration, I came to the conclusion that it would not only be more consonant with the task which has been allotted to me, to confine my observations to the principle laid down for discussion, and more within the limits which were intended to be occupied; but still more, that if the principle were once admitted, the details of such a measure would be much better arrived at by a discussion of quite another character, after a careful analysis of the present law, its decisions, &c.

* It has been kindly suggested to me by Mr. J. Perry, that the slightest interference with the affairs or business of the partnership does away with the advantages or protection of the act, and renders the party liable to unlimited responsibility; and that this may fairly be presumed to be the chief cause why so few partnerships have been formed under it for several years past.

We have, however, not only valuable proposals and suggested laws, viz., "The heads of a proposed Bill regulating Partnerships, communicated by the Right Hon. Francis Baring to the Committee on Joint Stock Companies, in 1844;" valuable suggestions in like, but more concise form, from Mr. J. Duncan to the Committee on Partnerships in 1851; and some useful suggestions from the Report presented to the Society for Promoting the Amendment of the Law, by the committee on this question, and made in 1849. We have the New York Code, contained in the revised Statutes of the State of New York, part 2 to 4; which, on the testimony of all witnesses on the subject, has worked well. We have also a very complete system in the Dutch law, contained in the Code de Commerce, which has received universal testimony, as far as we can ascertain, as to its beneficial operation in Holland. Much remains to be done in the way of law reform, but there is no branch in which the public interests are more deeply interested than the law of partnership; which, in many of its branches, is totally insufficient to meet the wants of the present state of our society: for instance, the difficulties of suing and being sued; the almost impossibility of taking partnership accounts; the impossibility of preventing frauds without recourse to a dissolution of partnership, and an equity suit of a character which has scarcely ever seen an end. But in nothing is reform more wanted than in the universal application of the law of unlimited liability. "There is no branch of the law of this country," says Mr. Ker, "which is so imperfect as that relating to Partnership." There is nothing which would be more benefited by a careful revision, together with the law of Debtor and Creditor; none in which the interests of all classes of the community are more deeply involved; none which would afford a more useful and interesting inquiry, or greater scope for investigation and suggestion. And amongst the questions and topics which present themselves on such an inquiry, none would be more prominent, or be called forth by a greater variety of interests, than the one we have been considering, viz, that of the policy of permitting the formation of partnerships in the United Kingdom, with a limited liability of sucha nature and extent as are now permitted in foreign countries. Whatever difficulties there may at first sight appear in framing a law to carry out such a policy, it does appear to me that, on a careful and impartial consideration of the evidence and information already had on this subject, and of the reasons and views which have been obtained, the interests of the community would be most materially served by its adoption; that vast injury may be caused by withholding it; and that the removal of the restriction in this respect should be granted.

I am, Gentlemen,

Your obedient servant,

HENRY COLLES.