

146. The Law of Limited Liability, as existing with us now, under the Acts 24 Victoria No. 21, amended by 34 Victoria No. 16, does not supply the want; for in the first place the system is altogether too cumbrous, too expensive, too complicated, and too dilatory for the circumstances of the great proportion of mining associations, composed as such associations for the most part are, of several "mates" working together, and without either the means or the desire to have all the expensive and elaborate machinery only adapted to Companies formed on a much more extensive scale. Again, the present plan of so-called "limited liability" has been shown to be susceptible of evasion to an alarming extent; and the astute intelligence of unscrupulous speculators has not been slow to perceive and to take advantage of a means of perpetrating a gross fraud upon the spirit of the enactments. This evasion and this fraud are carried into effect by what is known as the system of "dummyism." "Dummyism." It may be well, for the general information, to shortly sketch the practical working of this nefarious system. In the "limited liability" enactments, it is provided, as a security to creditors, that a certain proportion of shares must be subscribed before the Company can be registered under the Acts. The names of the shareholders, with the number of shares held, have to be published, a statement of the assets and liabilities of the Company is to be published periodically, and provision is made for winding up the Company on the petition of creditors. Now, before very long a system sprung up (which, there is only too much reason to believe, is of very general adoption), under which many of the subscribers to limited companies took up only a few shares in their own names, the remainder being put in the name of some man of straw, either a mere myth, or, what amounted to the same thing, a man utterly without means, and therefore not worth proceeding against for the recovery of calls. The scrip was issued to these "dummies,"—the real proprietors taking care that for all beneficial purposes the scrip should be theirs, and not the property of the nominal holders. The real proprietors paid the calls on the dummy shares, so long as it was found convenient to do so; but when the trial was found to be likely to end in failure, and the Company, having carried on as long as possible, was in process of winding up, this result followed; the few *bona fide* shareholders paid up their shares in full, the dummies paid nothing, and thus the creditors lost a large proportion of their just claims, while the honest shareholders who had not resorted to the assistance of the shams were mulcted in a loss altogether disproportioned to what should have been their legitimate risk. This is what is known as "dummyism," an evil which is far more easy to point out than effectual to remedy. Nor is it easy to see how,—except by vesting in the Courts charged with the winding up of Companies efficient powers for investigating the real state of affairs, and fixing the number of contributories not by the nominal share list but by the real holders,—this evil is to be remedied, if we adhere to the main features of the present Law of Limited Liability. Moreover, not only is "dummyism" a serious evil incident to our present system, but out of the comfortable assurance that the liability was limited, there arose in shareholders an absence of that lively interest in and strict personal supervision of the business of the Company (obviously so essential to the vigorous and honest prosecution of partnership concerns) which existed and must exist where the liability is unlimited; while the inability to increase their capital very frequently caused the breaking up of Companies before any beneficial result had been attained by large expenditure; all which expenditure in that case was thus merely wasted.

Defects of
present Limited
Liability Acts.

Further defects
of present
system.

147. Enough has, we think, been stated to prove that the present Law of Mining Partnership is not satisfactory. Unlimited liability, under the lax and dangerous system generally obtaining in the constitution of mining partnerships—inasmuch as it may mean ruin to any one of the partners—is quite sufficient to deter an investor from embarking in any such enterprise. When, again, we consider that, notwithstanding the provisions of the Act 30 Victoria No. 14. sec. 1, the storekeeper or other person with money which he may be ready and willing to advance to a party of miners, but for the repayment of which he can only look to the profits of the claim, may be, if he make the advance on the terms of being repaid by a share of the profits, regarded as a partner, and as such may become liable for the whole debts of the concern,—we can easily see that the person with money will, under such circumstances, hold aloof from making any such advance; and the struggling miners will, perhaps for want of a little timely help, otherwise readily forthcoming, be overwhelmed. Surely this thing should not be so. Or, if the miners and the storekeeper may think that they can make a special agreement amongst themselves,—that the storekeeper, though to receive a share of the profits, is not to be considered a partner,—yet, in the day of difficulty and debt the unfortunate storekeeper will awake to the disagreeable knowledge that that special agreement may have been efficacious to prevent his being a partner *inter se*, but was wholly valueless as to third parties. We have, in passing, called attention to the provisions of the 30 Victoria No. 14, sec. 1, whereby it is enacted that an advance made upon a contract that the person making the advance shall receive a share of the profits, shall not of itself render the person making such advance a partner; but we think this wholly fails to meet the case, for that strict interpretation put upon these words renders them in practice almost nugatory; for it very rarely happens that the person making the advance does not, in one way or other, expressly or impliedly interfere in the concern in which he thus has become interested; and the very slightest intermeddling of this kind is held to take the case out of the words of the provision, which merely says that the advance &c. shall not "*of itself*" render the person advancing a partner. We mean no disrespect to the educational attainments of miners and storekeepers on the Gold Fields, when we say they can hardly be expected to keep always before their view the very nice distinctions which exist as to partnerships *inter se* and partnerships as to third persons.

Further defects
of Partnership
Law.