

The Cost-book system.

148. The system which has perhaps best withstood the test of practical working is that known as the Cost-book system; the leading principles of which are thus stated by Mr. Lindley, in his treatise on the Law of Partnership:—"A Cost-book Mining Company is formed by agreement. A number of adventurers who have obtained permission to work a lode, agree to form a capital, to divide that capital into a certain number of shares, and to distribute the shares among themselves. They appoint an agent, commonly called a purser, for the purpose of managing the affairs of the mine, subject to the control of the shareholders. They write in a book, called the Cost-book, the agreement into which they have entered, and in this same book are inserted from time to time the receipts and expenditure of the mine, the names of the shareholders, their respective accounts with the mine and transfers of shares. The shares are transferable, and may be relinquished, and they may also be sold for non-payment of calls." (*See Lindley on Partnership*, vol. ii, p. 111.) All the transactions of the association are for cash, unless under some special circumstances of necessity or usage; and in the ready facility for inspection of the Cost-book afforded to all the shareholders, means are provided for constant and effectual supervision by one and all interested in the adventure, of the actual operations of the association. In all these particulars, and in the facilities for transferring and relinquishing shares, as well as in the power of enforcing payment of calls, there are great practical benefits; but in the absence of a limit to the liability of shareholders there is, we think, a great and needless risk.

Cost-book system at present one of unlimited liability.

149. That not only is the liability unlimited, but that considerable misapprehension exists upon this very important incident of the Cost-book system, is apparent from the following citation from Mr. Lindley. That writer says:—"It is sometimes represented—not certainly by lawyers—that the liability of shareholders in Cost-book Mining Companies is limited; that both their past as well as their future liability is got rid of as soon as they have transferred their shares, and that they are in no case liable for the debts of the mine, if they have paid the calls which may have been made upon their shares. All this is mere delusion; and although it is true that a shareholder can as between himself and co-shareholders get rid of his liability by transferring or relinquishing his shares, there is no authority whatever for saying that the liabilities of the shareholders to creditors are governed by principles in any respect different from those which apply to ordinary partnerships." *i.b.*, p. 112. And we think that the soundness of the principle involved in "limited liability" is now too well established to need any advocacy from us.

System recommended by Commission.

150. The system for, at all events, Companies other than the small co-partnerships which are composed of an association of a few mates in a claim, which we recommend for adoption in legislation upon Mining Partnerships, is *one which shall embrace the main features of the Cost-book system, with effectual limited liability engrafted upon and incorporated with it.* We should recommend that all Companies desiring to register under this improved system shall be compelled to publish, for general information, a periodical authoritative statement of the assets and liabilities of the Company; and that, in the event of the winding up of the Company, the Court seised of that duty shall have full power to investigate the whole affairs of the Company, with a view to fixing the liability of contributors, not by the mere nominal share-list, but by the amount of interest really possessed by individuals.

Creditors not to be at liberty to sue one partner alone for entire debt.

151. There should, we think, be some positive provision that a creditor should not be at liberty to single out one or two individual shareholders, to fix them alone with the sole liability, but that the liability should be limited in proportion to the extent of the shareholder's interest; and in this respect, therefore, we adhere to the principle of the Limited Liability Acts.

Registration to be notice of limit of each shareholder's liability.

152. And upon registration in the Office of the District Registrar of the conditions under which the Company or co-partnership is constituted, with a complete list of the shareholders, and the number of their respective shares, we are of opinion that such registration should, after the expiration of a reasonable time be considered notice to the World of the limit of the shareholder's liability.

Question of the obligations and rights of partners among themselves.

153. Apart altogether from the question of the relations of co-partnerships with the outside World, there are under the present system very many serious defects more particularly affecting the members of a co-partnership among themselves. In the first place, we think that one partner should be able to sue another in the Warden's Court for any just claim,—either for work done, materials supplied, or any money advanced,—notwithstanding that the claim may have arisen out of matters immediately in connection with the partnership.

Effectual restraint upon one obstinate mate in party of miners.

154. We would further recommend that some means should be provided whereby it should no longer be in the power of any one self-willed and obstinate partner (who, either through stupidity, foolish caprice, or from more sinister motives, insists upon running counter to the wishes of all his mates) to obstruct the beneficial working of a claim, and thereby to paralyze the energies of the whole party. We suggest that, in any case where a special written agreement has been entered into by two or more claimholders working together as one party, the Warden shall be empowered to decree specific performance of the terms of that agreement, or to award damages for the non-performance of any of its terms; that the Warden shall, moreover, be empowered to adjudge the forfeiture of the share of any non-complying partner, upon terms fixing the amount, in lieu of his interest, which such outgoing partner shall receive.