PRACTICAL DIRECTIONS FOR FORMING AND MANAGING JOINT-STOCK COMPANIES: WITH LIMITED LIABILITY OR OTHERWISE, UNDER THE PROVISIONS OF THE JOINT-STOCK COMPANIES ACT, 1856

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Practical Directions for Forming And Managing Joint-Stock Companies: With Limited Liability or Otherwise, Under The Provisions Of The Joint-Stock Companies Act, 1856 by John Duncan

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"JOINT-STOCK COMPANIES ACT, 1856."

BY

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1856.

PREFACE.

THE object of this pamphlet is to point out to the legal practitioner in particular, and to the public generally, how the provisions are to be best complied with of the new act of Parliament for regulating Joint-Stock Companies. Without professional assistance it will be unwise and imprudent for parties to proceed in establishing a company, either without or with "limited liability." At the same time, I have attempted so to string together and classify logically the subject-matters of the act, without reference to the order in which its sections are printed, as to make compliance with its provisions a task of comparative simplicity to everybody.

I have divided the entire subject into :—

1st. Initiatory proceedings to commence, register, and establish a new company (page 10).

2nd. What an established registered company in its business and management can do, and what it cannot do (page 25).

3rd. What such a registered company must do (page 29).

4th. Nature and extent of liability of shareholders (page 32).

5th. Compulsory examination of accounts by inspectors (pages 34).

6th. Winding-up of companies (page 35).

7th. General provisions in the act (page 39).

8th. Proceedings to be adopted for registration of existing companies (page 42).

The act is one of the most important, and will probably be one of the most beneficial, that has ever been passed by Parliament. I purpose to devote myself to piloting promoters, capitalists and professional men through a compliance with its provisions, and nothing can facilitate my objects more than to assist, by the following pages, in making those provisions clear and intelligible to all. I humbly trust that I have succeeded in this attempt, which has been a comparatively easy labour, from the clear language used in the act. I shall be pleased to receive at all times suggestions for the amendment of my text in future editions.

Office for establishing Joint-Stock Companies,
60, Old Broad Street, London,
July, 1856.

PRACTICAL DIRECTIONS

FOR FORMING AND MANAGING

JOINT-STOCK COMPANIES.

THE act of Parliament for the "Incorporation and Regulation of Joint-Stock Companies and other Associations" has received the sanction of the legislature.

It is not intended to discuss the policy which has led to the adoption of this measure, or to criticise the law as it has been fixed by the provisions of the act, whether it should have been more or less extensive, or other than it is. Suffice it to say, that the formation of joint-stock companies, with limited liability, for all purposes but banking and insurance, is now practicable and easy, and is the established law of the land. Every one knows, or ought to know, that the expression "with limited liability," as applied to a joint-stock company, means, that its shareholders are not liable to pay up any more than the amount of their subscriptions to its capital, whatever may be the losses, embarrassments, or debts of the company

in which they are partners. Severe has been the struggle to obtain this important change in the law. At last success has crowned the efforts of those who have contended for the alteration. The writer was examined before Committees of the House of Commons, in 1843 and 1852, upon this subject, and he on both occasions, to the best of his ability, stated the grounds and reasons why limited liability to shareholders in a joint-stock company should be sanctioned. This principle has been advocated by many most able champions, and by none more powerfully and zealously than by Mr. Commissioner Fane. Finally, in 1856, the full approval of both Houses of Parliament to this principle has been accorded. Many may be the mishaps to companies formed under the new act. Associations may exist for a month or twelve months, or much less, and then die and disappear. Some may expire in bad odour and some not. But this will not be the fault or effect of the change in the law; sound undertakings will, by the new act, be greatly facilitated in their establishment, and honesty, perseverance, and prudent careful management and economy, will lead to that success which is unattainable, either to companies or individuals, except by these means — *the one essential thing being always borne in mind, that to attempt to carry on an undertaking or business without a sufficient paid-up capital must result in embarrassment, if not ruin.*

Banking and insurance companies are excluded

from the privileges of the act. It is expressly stated in a recital, that the act shall "not apply to persons associated together for the purposes of banking and insurance." Whether this be right or wrong I do not stop to discuss—it is the fact,—the legislature has so determined. Banking companies, therefore, can be formed hereafter only under the act of 7th and 8th Victoria, chapter 113; called, "An Act for Regulating Joint-Stock Banks in England." By that act the shareholders of a banking company are subjected to unlimited liability. Each is answerable with his or her whole fortune for the debts and liabilities of the banking company in which he or she may be a holder of shares.

As regards existing insurance companies, completely registered, not possessing special acts of Parliament, they will be regulated by the provisions of the Joint-Stock Companies Act of 1844, which has been repealed, except as regards such insurance companies. Every shareholder in a new insurance company will be liable for the whole debts of the partnership, unless protected by the forms of the policies and contracts which the directors may sign to third persons or creditors, or by a special act of Parliament to be obtained. New insurance companies can be formed hereafter only by deeds of settlement, or by special acts or charters.

Companies for working mines upon the cost-book principle must also be here specially noticed.

Practically, the act abolishes all cost-book partnerships, except those "engaged in working mines within, and subject to, the jurisdiction of the Stannaries." That jurisdiction is confined to mines in the counties of Cornwall and Devon. Companies may continue to be formed to work mines in other counties or even abroad, and may profess to be subject to the rules and regulations of the cost-book; but it will be a delusion to the shareholders in such companies to think, that they will have the protection which the cost-book principle, within the jurisdiction of the Stannaries, now gives, and will continue to give, to adventurers or shareholders in the mines subject to that jurisdiction. Such companies, out of that jurisdiction, must be formed and registered under the new act, in order to obtain limited liability; and if not so formed and registered, but professing to be established on the cost-book principle, each and every shareholder in them, whatever may be the self-constituted rules and regulations to the contrary, will be "severally liable to the payment of the whole debts of the partnership, and may be sued for the same, without joining to the action or suit any other members of the partnership." (Section 4.) Let not adventurers in mines be deluded on this subject. There are some parties extraordinary sticklers for the cost-book principle; they will be unwilling to admit that this is the result of the legislation under the new act, as regards mining partnerships; but it is vain so to contend. The