Cambridge University Press & Assessment
978-1-108-79695-8 — Contemporary Australian Corporate Law
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Excerpt
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1 CONTEXT, HISTORY AND REGULATION

1.05 Introduction: the importance of context

Corporate law, like all law, has a context; indeed, it has many contexts. To understand corporate law today, we need to appreciate the forces—social, political, economic, global and local—which shape that law. Modern corporations and contemporary Australian corporate law should be understood as a product of, and a compromise between, various social, economic and legal ideas and philosophies. This is the focus of the first two chapters of this book.

We begin by looking at two contextual settings of contemporary Australian corporate law: its history and its regulatory structure. This chapter will explain the history of the modern corporation and the various approaches to regulating corporate conduct. History is important; it assists in understanding how and why modern corporations and the law that regulates them have developed into their current form. A deeper appreciation of modern corporations and their regulatory framework can be gained by understanding why things have developed as they have.

The corporation and corporate law were not invented in a single session by the work of enlightened lawyers or politicians. Things have evolved in a piecemeal and sometimes inconsistent fashion. They were not developed in harmony. Key steps in the evolution of the corporation as a legal structure often occurred despite the intentions of law-makers. This book will refer to and compare the historical antecedents of the various concepts and ideas which comprise modern corporate law in Australia. Chapter 1 presents an historical overview and framework to assist the reader with subsequent material. Necessarily, this will be a truncated version of corporate history. When reading the chapter, it is important to bear in mind that 'history means interpretation'.[1] Historians take different views and provide different accounts of historical events. This is true of corporate law history, and it is not our intention to canvass the full range of historical arguments. The reader is encouraged to pursue a more detailed study, using the materials referred to in the footnotes.[2]

In this chapter, we ask the reader to temporarily postpone the quest for a more detailed explanation of the legal concepts that are introduced. We will come back to examine these concepts in detail elsewhere in the book.

1.10 Some perennial questions

Corporate lawyers might think that the corporation is a legal structure over which they have a unique claim to expertise. However, many of the features that are integral to modern corporations—such as automatic incorporation on registration, limited liability of members, and the division of functions between managers and members—owe their origins to the efforts of merchants, business people, politicians, and economists, as well as those of lawyers.[3] The basic features of modern corporations developed because of concerns that emerged between the seventeenth and nineteenth centuries. This section identifies some broad themes that have underpinned the rise of the corporation and corporate law. The details of the history are supplied in subsequent sections of the chapter.

1 E H Carr, *What is History?* (Penguin, 2nd ed, 1987) 23.
2 In addition, note Richard Dale, *The First Crash: Lessons from the South Sea Bubble* (Princeton University Press, 2005); R Harris, *Industrialising English Law: Entrepreneurship and Business Organisation 1720–1844* (Cambridge University Press, 2000); P Johnson, *Making the Market: Victorian Origins of Corporate Capitalism* (Cambridge University Press, 2010).
3 See, eg, R Kostal, *Law and English Railway Capitalism* (Clarendon Press, 1994).

It is important to keep in mind that at the time when early corporate law was developed, English law was in the process of laying down its modern liberal foundations. The political philosophy of liberalism emphasises that society is made up of private individuals who possess rights, owe each other duties, and should be personally liable for their actions. How could a legal system built upon such ideas accommodate the growth of group enterprises? The history of corporate law can be interpreted as a series of attempts to address this fundamental question. This question subsumes four points of tension which are central to corporate regulation in a liberal legal system.

First, there is the 'group versus individual' issue. To what extent should the law recognise corporations, rather than individuals or investors, as bearers of rights, obligations and liabilities? In the corporate law context, this question has arisen in a number of ways. For example, should the members of a group enterprise be able to minimise the risk of commercial failure by limiting their liability, or should the same principles of legal responsibility apply as for individual traders? Should a group be able to hold title to property as distinct from the individual members? Should a group be able to pursue or defend legal claims to the exclusion of individual members?

A second tension lies between the roles of management and 'ownership' of the corporation. Liberal philosophy emphasises the freedom of the individual to own property and, within limits, to control its use and disposal. However, the efficient operation of a group enterprise will often require that control of the enterprise and its assets be exercised by a small group of managers on behalf of the larger group of members. Thus, most large corporations are structured in a way that separates the 'ownership' function of members from the management function of directors and company officers.[4] Accordingly, issues of internal responsibility and accountability are important in the development of modern corporations. Equally important is the question of external responsibility and accountability. For example, how should the relationship between the association and outside parties, such as creditors and customers, be addressed? Should this be a matter of contractual negotiation, or should the state set standards or rules?

This takes us to the third tension, which is the debate between facilitation and intervention. What is the role of government regulation in relation to corporations? If, for example, corporations are regarded primarily as private entities, then the role of the state should be primarily facilitative rather than interventionist. The law should assist individuals in the private pursuit of profit because this, in turn, will promote economic efficiency. There should be a minimum of mandatory or punitive rules regarding corporate behaviour. The opposing view in this debate stresses the role of corporations as important social and economic actors, justifying a more interventionist role by the state.

The fourth tension is the 'private versus public' issue. This involves a debate about the legal and political status of corporations. For example, to what extent should corporations be regarded simply as associations created by, and operating for the benefit of, private initiative, versus a view in which, because they owe their legal existence to the state, they have broad public or social responsibilities?

These perennial debates provide the basic elements for a conceptual framework to which the reader can refer and develop throughout this book. We begin this process by examining the historical manifestation of these issues.

4 We qualify the word 'ownership' because, as we will see, it is not strictly accurate to say that the corporation is 'owned' by its members.

1.15 English company law in the seventeenth and eighteenth centuries

The origins of today's corporate structures can be traced back to medieval times.[5] However, a more manageable starting point for present purposes is the developments in England beginning in the seventeenth century. This is a convenient point from which to chart the development of the corporation, as well as the beginnings of legislative and regulatory responses.

As we have noted, the features regarded as intrinsic to the modern corporation did not develop at the same time. Across the seventeenth and eighteenth centuries we see these various features emerging in different types of joint enterprise. It is only later that they came to be united within a single type of entity.

One of the earliest examples of joint enterprise to bear some resemblance to the business corporations of today were companies incorporated either by the Crown or by Parliament. These were associations, formed for some commercial or ostensibly public purpose, that petitioned for grants of legal status as entities in their own right. The new entities had legal capacities distinct from the individuals involved in the enterprise. These grants of incorporation could be acquired only by Royal Charter from the Crown or by a private Act of Parliament. Such a Charter or Act might define aspects of the legal relationships which would exist between the newly created legal entity and the individuals who participated in the enterprise. Limited liability of members for debts of the business was not necessarily an express part of the grant of incorporation, although it was often assumed that each member was liable only to the extent of his or her capital contribution. Charters often purported to limit the grant of incorporation to a defined number of years, although many companies continued to trade on the basis of outdated charters, as seen below.

These early corporations were based on an idea that lies at the heart of the development of the modern company—the joint stock principle. Each original member of the company contributed to a common fund that was managed by a committee selected from the members. Profits, in the form of dividends, were then distributed to the members in proportion to their shareholding. In this context, the term 'joint stock' referred to the trading or floating capital that was used by the company in the course of the enterprise. It was possible for members to transfer their share in the enterprise to others without seeking the permission of other members. This free transferability meant that membership in a joint stock venture was often shaped more by the expectation of financial gain than by personal involvement in the enterprise. The advantage of the common fund of capital—or joint stock—was that it permitted the risks associated with expensive and long-term ventures (such as foreign trade) to be spread across a large number of investors.

The most prominent examples of these chartered companies were large foreign trading companies, such as the East India Company and the Hudson Bay Company. As their names suggest, the principal advantage of incorporation by charter was that it gave an exclusive right to conduct trade in a particular geographical area. These monopoly trading rights and special privileges were the main reason for seeking incorporation, as a recompense for the risks involved in undertaking large-scale foreign trading ventures. The advantage for the state in granting corporate status to the venture, particularly in the case of the foreign trading companies, was that trade could be encouraged and controlled, while revenue in the form of taxes and duties could be raised. Thus, chartered companies played an important role in Britain's colonial expansion.

Alongside the joint stock principle was the idea that the ownership of the capital contributed by investors could be separated from the control of that capital. While investors or financiers

5 See J Braithwaite and P Drahos, *Global Business Regulation* (Cambridge University Press, 2000) ch 9.

bought shares in a company, owning shares in the company did not necessarily give them the other rights that are customarily associated with property ownership. Adam Smith, in his book *The Wealth of Nations* published in 1776, noted that the joint stock principle usually resulted in a division of functions within the company:

> The trade of a joint stock company is always managed by a court of directors. The court, indeed, is frequently subject, in many respects, to the controul [sic] of a general court of proprietors. But the greater part of those proprietors seldom pretend to understand any thing of the business of the company; and when the spirit of faction happens not to prevail among them, give themselves no trouble about it, but receive contentedly such half yearly or yearly dividend, as the directors think proper to make to them. This total exemption from trouble and from risk, beyond a limited sum, encourages many people to become adventurers in joint stock companies, who would upon no account, hazard their fortunes in any private copartnery.[6]

The separation of ownership of shares by members from control of the business by its managers is fundamental to all contemporary large-scale corporate enterprises. This issue underlies perennial questions about the extent to which minority shareholders should be bound by the decisions of the majority, and whether a company's directors should be regulated by specific contractual obligations created by their company or by statutory rules that apply to all companies. These questions are dealt with later in this book.

The principal disadvantage of petitioning for incorporation was that it imposed considerable costs on merchants, with the added uncertainty of an outcome dependent on the discretion of the Crown or Parliament. For this reason, charters were usually only sought by traders seeking the benefits of a monopoly over an area of trade. Domestic commercial ventures rarely sought incorporation, being content to obtain most of the benefits by careful wording of the agreement by which the association was established.[7]

During the seventeenth and eighteenth centuries the alternative to incorporation was to trade as a commercial partnership. The idea of the partnership preceded the incorporated company. Since the Middle Ages, the most widely used form of partnership in English law was the *societas* (as it was called in Roman law). This form of association had no legal status, although it was usual to trade under a firm name. The individual partners shared the profits and losses as well as bearing the liabilities of the enterprise between them. The direct involvement of all partners in the business imposed practical limits on the size of the partnership and the size of the business. This was less of a problem for the alternative form of partnership, again derived from Roman law, known as the *commenda*. This allowed for a distinction to be made between the active partners, who bore full liability, and the dormant partners, who were liable only for the amount which they undertook to contribute. This form of partnership was not widely used in England, one reason being that English accounting practice was slow to recognise the need to separate the accounts of the firm from the capital accounts of the individual partners.[8] Instead, the *societas* was used more frequently, although over time its structure came increasingly to approximate that of the *commenda*.

6 Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Clarendon Press, 1976) 741.

7 W R Cornish and G de N Clark, *Law and Society in England 1750–1950* (Sweet & Maxwell, 1989) 248. For discussion of the direct and indirect costs of incorporation, see G M Anderson and R D Tollison, 'The Myth of the Corporation as a Creation of the State' (1983) 3 *International Review of Law and Economics* 107, 112.

8 C A Cooke, *Corporation, Trust and Company: An Essay in Legal History* (Manchester University Press, 1950) 46. Holdsworth lists other reasons, including legislative hostility to the notion of limited liability: W Holdsworth, *A History of English Law* (Methuen, 2nd ed, 1937) 96–7.

When identifying the main forms of business association in common usage during this period, we emphasise the differences between the terms 'company', 'partnership' and 'corporation'.[9] In the eighteenth century, the term 'company' did not carry the specific legal meaning it has today. The term was used primarily to refer to a commercial association having a particular economic form. Companies were regarded as being comprised of a large number of members, the business being managed by a smaller committee. The term 'partnership' was used to refer to a relatively small association of individuals, most of whom would have some involvement in managing the enterprise. At common law, both companies and partnerships were regarded as sharing the same legal features. In particular, neither had any separate legal status.[10] A joint stock company was regarded as a company even though it was not incorporated. If a joint stock company was incorporated by charter or special Act, the term 'corporation' would be used to describe its legal status. It is only later that the term 'company' came to have an exclusively legal meaning, denoting a distinct legal entity with its own legal status.

The rapid expansion of trade in the eighteenth century meant that commercial associations often required large accumulations of capital. This demand led to the gradual transformation of partnerships from the *societas* to larger, more dispersed forms. Like the *commenda*, these large partnerships often consisted of a number of passive investors joining together on the basis of the joint stock principle. In practice, there was little difference between the unincorporated joint stock companies and corporations which operated under a grant of incorporation by charter or statute, other than the monopoly rights which were granted in the latter case. In most other respects, incorporation or the lack of it made little practical difference.[11] Nevertheless, unincorporated firms were classified for legal purposes as 'partnerships' and were treated accordingly.

It was usual for an unincorporated company's constitution to provide that shares in joint stock were freely transferable by members. An organised and sometimes volatile market developed to facilitate the trading of these shares. The periods during which stock prices rose dramatically and subsequently fell had a significant influence on attitudes towards the regulation of the corporate form. There were concerns about the practice whereby entrepreneurs would either form an unincorporated joint stock company or, more frequently, take over a disused charter company. The public would then be invited to invest by purchasing joint stock. These invitations were often associated with inflated or vague promises about the company's prospects and likely returns, and these ventures came to be described as 'bubbles'.[12] The author of a 1923 text on the history of English company law provided the following description of the worst of these practices:

> In some cases only sixpence or a shilling per cent. was demanded upon first subscription, and so gullible had the public become that in many cases some obscure opener of books of subscription, contenting himself with what he had got in the morning, was not to be found in the afternoon, the room he had hired for the day being shut up, and he and his subscription book never heard of again![13]

9 The following discussion relies on P Ireland, 'The Rise of the Limited Liability Company' (1984) 12 *International Journal of Sociology of Law* 239.

10 The concept of corporate separate legal status is discussed in detail in Chapter 3.

11 W Holdsworth, *A History of English Law* (Methuen, 2nd ed, 1937) 215.

12 Cooke cites examples of joint stock companies which were set up 'To make salt water fresh' and 'For an undertaking which shall in due time be revealed': C A Cooke, *Corporation, Trust and Company: An Essay in Legal History* (Manchester University Press, 1950) 81.

13 R Formoy, *The Historical Foundations of Modern Company Law* (Sweet & Maxwell, 1923) 28.

The most prominent example of this sort of speculation involved the South Sea Company. This company was formed in 1711, initially with the object of obtaining a trade monopoly with rich Spanish colonies in South America and the West Indies. The venture was sufficiently successful: in 1719 the company offered to take over almost all the national debt from the British Government. Under this scheme, the company would pay creditors of the Government, mostly holders of annuities,[14] in full. The payment could either be in cash or in the form of shares in the company. In short, creditors of the British Government were being offered the chance to swap their claims against the Government for shares in what looked to be a prosperous company. The Government benefited because, under the scheme, the interest payable on the debt owed to the annuity holders was to be reduced. The benefit to the company lay in holding a loan on which the Government paid interest, and the anticipation that this could be used by the company to raise further sums to extend its trading venture. It was hoped that a close association with the Government would be good publicity and a source of investor confidence. The success of the scheme depended upon the market value of the company's shares remaining high so that annuity holders would be tempted to invest. The scheme was a huge success initially, judging by the large numbers of people who invested in the company and the upward surge in the company's share price. Eventually the share price collapsed and the South Sea Bubble was burst. This boom in stock speculation rapidly spilled over into the stocks of other companies, many of which were formed solely to take advantage of the investment frenzy.

Apart from the potential for fraud and wild speculation, there were further implications raised by the joint stock principle and the separation of management functions from membership. Throughout the eighteenth and nineteenth centuries these were highlighted by writers of diverse persuasions. Adam Smith, described as the 'father' of classical laissez-faire economics, conceded that grants of monopolies and special privileges by the state might be necessary for the introduction of new types of commerce. However, he argued that in the long term this form of government intervention impeded the growth of productivity and free trade.[15] In part, this was because the directors of these companies were managing other people's money. He stated:

> … it cannot well be expected, that they should watch over it with the same anxious vigilance with which the partners in a copartnery frequently watch over their own. … Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company.[16]

Smith argued that the joint stock company form was only appropriate for certain types of ventures, such as banking, insurance, and the construction of canals and aqueducts. In these essential trades, the operations of the company were so routine or uniform that the risk of managerial abuse was minimal.

The liberal philosopher John Stuart Mill acknowledged the risk that 'hired servant' directors of a joint stock company might not exhibit the same commitment to the job as the owner-managers of private partnerships. Mill also urged that the joint stock company had two advantages: it had the capacity to undertake large-scale enterprise on a continuing basis, and it was possible to hire directors with the skills appropriate to the enterprise in question.[17]

14 An annuity is a form of investment which gives an investor the right to receive a fixed sum of money on an annual basis for a defined period of years.

15 See Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Clarendon Press, 1976) ch 1.

16 Ibid 741.

17 J S Mill, *Principles of Political Economy* (Longmans, 1923) ch IX.

From a different political perspective to that of Smith and Mill, Karl Marx saw the rise of the joint stock company as evidence of the inevitable contradictions and instabilities within capitalism. Marx argued that because those who owned the capital—the members—were not directly involved in its management, then the potential for expansion into new risky business ventures would no longer be governed by the knowledge and experience of the owners. Moreover, the economic role of the capitalist was now carried out by a person who was 'a mere manager, administrator of other people's capital'.[18] This 'private production without the control of private property'[19] meant capitalism would be driven by financial speculation rather than the needs of production, leading to its eventual decline.

1.20 The *Bubble Act* and its consequences

The unparalleled level of share speculation eventually led to the collapse of many of the 'bubble companies' in 1720. The loss of investor confidence that followed caused a general panic in the stock market which burst the investment bubble. Just prior to these events, the British Parliament passed the first instance of modern company legislation—the *Bubble Act 1720*.[20] The purpose of this Act was an attempt to confine the benefits of the boom market to the South Sea Company. The Act sought to achieve this by making it illegal to form a joint stock company and to create transferable shares without a grant of legal authority, either by Act of Parliament or by Royal Charter. In other words, unincorporated companies with transferable shares were prohibited, and only incorporated companies and common law partnerships were allowed to continue.

While there were only a few immediate prosecutions under the Act, it had a symbolic impact, expressing widespread disapproval and concern at the excesses produced by rampant financial speculation. Although the Act did not result in an increase in the number of petitions to Parliament for incorporation, it influenced the scope of speculative activity. In the face of the legal restrictions in the Act, the main alternative to incorporation for commercial enterprises was to operate as a partnership. However, the problem for business people was that the partnership had its own legal restrictions. Under the common law, a partnership could not hold property in its own name. Interests in the partnership could only be transferred with the consent of the other partners, each partner was liable for the debts of the partnership, and the partnership was subject to dissolution on the death or withdrawal of any one partner. Partnerships at common law lacked two features needed for an investment vehicle: free transferability of shares, and continuity of existence.

To meet the demands for a commercial entity that would overcome these limitations but not fall foul of the *Bubble Act*, lawyers developed a de facto corporation—an association based on the equitable trust. Investors subscribed funds which were then vested in trustees to be held on trust and managed according to the purposes specified in a deed of settlement. The deed contained a series of mutual promises and undertakings between the investors (members of the company) and the trustees.[21] These 'deed of settlement companies' continued to use the

18 Karl Marx, *Capital: A Critique of Political Economy*, vol III, https://www.marxists.org/archive/marx/works/download/pdf/Capital-Volume-III.pdf 303.
19 Ibid 304.
20 6 Geo I, c 18, ss 18–21.
21 The deeds of settlement were the forerunners of the modern company constitution.

joint stock principle, but relied upon equity law to overcome the legislative prohibitions and the common law restrictions. As the English legal historian Maitland described it:

> [I]n truth and in deed we made corporations without troubling King or Parliament, though perhaps we said we were doing nothing of the kind.[22]

These companies had a joint stock, which divided ownership into units, but, in order to escape the prohibitions of the *Bubble Act*, there would be some nominal restriction on the transfer of stock.[23] As with earlier companies based on the joint stock principle, owners of shares in deed of settlement companies had little, if any, involvement in management of the company, which was conducted by a managing committee.

Deed of settlement companies were only recognised in equity, whereas the courts of common law only recognised incorporated companies or partnerships. Deed of settlement companies, as far as the common law was concerned, were classified as partnerships. The position has been summed up as follows:

> The two branches of the law were thus in conflict over the new business unit, and against the common law's attitude that there was no such thing as an unincorporated joint stock company, was the definite development of an institution somewhere between partnership and incorporated company, under Chancery jurisdiction.[24]

The unintended effect of the prohibitions in the *Bubble Act* was to give the courts of equity a prominent role in the development of the joint stock company.

By the end of the eighteenth century, commercial enterprise was increasingly organised on the basis of deed of settlement companies.[25] While these companies became popular, incorporated companies continued to be created. The industrial boom, with its demand for canals and railways, meant that companies formed for such purposes could confidently seek a private Act from Parliament. These Acts conferred a varying range of benefits on the companies. Some Acts granted the power to sue and be sued in the name of a company officer. Others granted special powers relating to the acquisition of land. But obtaining a grant of incorporation to secure these benefits was not guaranteed, remaining within the realm of Royal or Parliamentary prerogative.[26] Incorporation was seen as a privilege conferred by the state. We will see in Chapter 2 that this historical view continues to have implications for the regulation of corporations.

Another point of distinction between companies established by deed of settlement and those given incorporated status deserves emphasis. We have seen that corporations were created by charter or statute so that people could pursue a joint, profit-making interest for some public purpose. The grant of corporate status, together with the attendant privileges, was clothed with the rhetoric of public responsibility.[27] In contrast, the deed of settlement company developed as a vehicle for organising and promoting private interests. This shift in perspective, from public to private purposes, is important in the development of modern corporate culture. As we noted earlier in this chapter (see section 1.10), it has important implications for arguments about the appropriate degree of state regulation of corporations.

22 F W Maitland, *Collected Papers*, III (Cambridge University Press, 1911) 283.
23 This concept has remained in the form of the modern proprietary company.
24 C A Cooke, *Corporation, Trust and Company: An Essay in Legal History* (Manchester University Press, 1950) 96.
25 L C B Gower, *Gower's Principles of Modern Company Law* (Sweet & Maxwell, 5th ed, 1992) 31.
26 See, eg, R Kostal, *Law and English Railway Capitalism* (Clarendon Press, 1994).
27 C A Cooke, *Corporation, Trust and Company: An Essay in Legal History* (Manchester University Press, 1950) 49.

1.25 The nineteenth century

During the late eighteenth and early nineteenth centuries, there was periodic repetition of the speculative fervour that marked the demise of the South Sea Company bubble. As one historian describes it:

> Prospectuses routinely contained false or exaggerated claims about a new company's subscribed capital, investors, and managers. Respectable securities brokers were hired, 'on very tempting rates of commission', to trade in bubble company scrip. Company accounts were faked and suppressed. Dividends were declared from capital accounts. Sham directors held lavish entertainments at the sham offices of sham companies. All of this and more was done to create the illusion of the 'bona fide character of the undertaking'.[28]

Early in the nineteenth century, the prohibitions in the *Bubble Act* were enforced sporadically.[29] At the same time, the use of the deed of settlement company was gaining acceptance. Faced with widespread avoidance, the Act was repealed in 1825. In summary, at this time there were three types of association in use: the common law partnership, the unincorporated joint stock company formed by deed of settlement, and the incorporated company formed by charter or special Act of Parliament. Of these, the first two were the most numerous.

In the period between the repeal of the *Bubble Act* and the 1840s, the idea of a company structured around the joint stock principle continued to gain acceptance. There were many factors behind this.[30] Among these were the continued availability of this form of organisation via charter or special Act of Parliament, the extension of certain joint stock privileges to provincial banks (such as the right to sue and be sued in the name of a public officer), and a continuing interest in a form of partnership which would allow for non-active investing partners to limit their liability to the extent of their contribution.[31] According to one legal historian, in this period:

> [T]he economic group, focused through a joint stock fund, had established itself as the most important of developing business forms; its existence was no longer questioned although its powers and immunities were.[32]

At the same time, continuing evidence of fraudulent company promotions led to a growing belief that some form of legal regulation was necessary. During this period, calls for legislative action were catalysed by publicity surrounding widespread business failure and malpractice.[33] This was a time when there was debate about the need for, and policies to be pursued in, the legal regulation of companies and corporations.

One issue which figured prominently in public debate was whether members of a joint stock company should be permitted to limit their liability to creditors of the company. The idea that each member's liability would be limited to the amount which he or she contributed to the joint stock fund was not new. Members of unincorporated joint stock companies could

28 R Kostal, *Law and English Railway Capitalism* (Clarendon Press, 1994) 23.
29 C A Cooke, *Corporation, Trust and Company: An Essay in Legal History* (Manchester University Press, 1950) 97–9.
30 W R Cornish and G de N Clark, *Law and Society in England 1750–1950* (Sweet & Maxwell, 1989) 252–3.
31 This latter form of partnership, known as the *société en commandite*, was based upon the old idea of the *commenda* and was recognised in civil law jurisdictions.
32 C A Cooke, *Corporation, Trust and Company: An Essay in Legal History* (Manchester University Press, 1950) 110.
33 Some of these fraudulent practices are described in Charles Dickens' *Martin Chuzzlewit*, first published in 1843.