The world’s first stock exchange: how the Amsterdam market for Dutch East India Company shares became a modern securities market, 1602-1700

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3 CONTRACT ENFORCEMENT

Introduction

An active market will develop only if traders can be sure that their trades will be executed by the market.\(^1\) A trader will be hesitant to enter into a transaction if his counterparty can renege on his obligations without suffering adverse effects. So, for the development of the secondary market for VOC shares, some kind of mechanism for contract enforcement had to be in effect. Fortunately, the Low Countries already had a long history of commercial contracting when share trading started in 1602, so merchants and legal institutions were experienced in enforcing commercial transactions.\(^2\) Moreover, the legal system acknowledged its important role in the development of trade. In Antwerp, the commercial metropolis of the sixteenth-century, the legal institutions interacted with the merchant community and promoted the merchants’ interests.\(^3\)

Share trading did thus not emerge in a legal void. On the contrary, the legal principles that applied to the transactions on the share market were already in existence and hence the share transactions fitted into existing categories of commercial law. The laws that applied to the transfer of title of a share, for example, were the same as those that applied to the transfer of ownership of real estate – both were considered immovable goods under Dutch law.\(^4\) However, not everything was clear from the start, as the large number of conflicts between share traders that ended up in lengthy court cases in the period before 1630 shows. For period 1610-30, I have found thirty lawsuits dealing with share-trade-related court cases in the archives of the Court of Holland in The Hague.\(^5\) This provincial court pronounced judgment in about 150

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4 See footnote 28 on page 98.
5 Heleen Kole generously shared the notes she made for Oscar Gelderblom in the Court of Holland archives with me. She used a sample of court cases over the period 1585-1630 in which litigants appeared whose last names started with B, M or P. In addition to her sample, I used the name index (NA, Court of Holland, inv. nr. 1077) to look up all cases whose litigants are known to also have been share traders. There are no share-trade-related court cases available prior to 1610; which can be explained by the facts that it took several years before the court pronounced judgment, that there were relatively few trades in the first years after 1602 and that share traders started using more advanced financial techniques (forward trading, short selling) only from 1607 onwards.
cases per year, which means that one percent of the cases concerned share transactions.

After 1640, however, the ratio decreased to about one in every five-hundred lawsuits. I will show in the first section of this chapter that in the earliest decades of the development of the secondary market for VOC shares, traders started litigation to test the bounds of the existing legal concepts. These litigants were convinced that there existed some space to maneuver within the rule of law. They were willing to enter into costly litigation – lawsuits before the appeal courts of Holland became especially costly if litigants kept adducing new evidence and appealing judgments – that took up a great amount of effort; lawsuits that were ultimately brought before the Court of Holland could take anywhere between three-and-a-half and twelve years.

From around 1640 onwards, however, traders no longer brought their share-trade-related conflicts before the higher courts. By then, the Court of Holland had pronounced judgment on all legal concepts that applied to the share trade. Henceforth, share traders could predict how the courts would decide in share-trade-related conflicts. Traders were no doubt abreast of the jurisprudence concerning the share trade and they regarded the Court of Holland as the authoritative institution regarding new interpretations of the law; they explicitly referred to earlier judgments of the

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6 There are twenty so-called extended sentences of lawsuits dealing with share-trade-related conflicts available for the period 1640-1700. I have used the name index (NA, Court of Holland, inv. nr. 1078) to look up all cases for which I knew that the litigants (or their close relatives) traded shares. Additionally, I have checked all lawsuits listing names of Portuguese Jews.

7 In the case between the directors of the VOC and Abraham de Ligne c.s., for example, the costs for the report made by one of the councilors of the High Council already amounted to f 126; each party had to pay half. This sum does not include the costs of lower courts, the process server, the solicitors’ fee and taxes. NA, High Council, inv. nr. 642, 7 December 1621. These reports usually constituted half of the court’s total costs; a bill in the Cardoso family’s estate shows that the report constituted about 60 percent of the court’s costs: f36 on a total of f59.20. Rachel Cardoso had to pay half of this amount (f28.40), to which a total of f12.90 taxes were added: bill Parnassim of the Jewish community of Amsterdam c.s. Rachel Cardoso, 2 November 1712, estate David Abraham Cardoso, SAA, PIG, inv. nr. 654. The reports of the Court of Holland’s commissarissen (e.g. NA, Court of Holland, inv. nr. 1355, for the year 1672) sometimes also include the bill of the court’s process server. He charged f3.75 for every summons. The clerk of the court’s office charged f6.20 per document. The bill could become steep if a lawsuit involved several litigants who all had to be served summons individually.

8 The main factor of influence on the variation in duration was the amount of time litigants let go by before they submitted a request for appeal. The Court of Holland of course employed a maximum term to request an appeal, but the court could make exceptions for special cases. Moreover, a lower court’s judgment could be suspended for the duration of the appeal (mandement in cas van appel) only if the appeal had been requested within a short period: M.-Ch. le Bailly, Hof van Holland, Zeeland en West-Friesland: de hoofdlijnen van het procederen in civiele zaken voor het Hof van Holland, Zeeland en West-Friesland zowel in eerste instantie als in hoger beroep (Hilversum 2008) 26. Le Bailly does not mention the maximum periods before lodging an appeal.
Court of Holland if a new conflict arose. The courts’ jurisprudence can thus be regarded as securities law.

The legal certainty that emanated from the judgments of the Court of Holland reduced investors’ hesitancy – smaller merchants and, most prominently, Portuguese Jews – to participate in the share trade. As a result of the establishment of a clear legal framework, the market grew considerably in size. Focusing on transaction costs can help to understand how legal certainty can persuade people to invest: the formation of a clear legal framework reduced the costs of protecting contractors’ rights and also of costly enforcement of agreements by a third party, i.e. the court.

However, the legal certainty applied only to part of the market: shareholders were allowed to trade only shares they legally owned on the spot and forward markets. The possibilities for growth were thus limited by the size of the VOC capital stock – the amount of legal shares available on the market. The sources clearly show that a number of traders performed far more transactions than their shareholdings would legally allow. Jacob Athias and Manuel Levy Duarte, for example, had monthly share turnovers on the forward market during the period 1683-4 of between f200,000 and f2,000,000. At the same time, however, there were only very few mutations registered on their account in the capital book of the Amsterdam chamber and their nominal position never exceeded f3,000. In June 1684, they liquidated their position. Their forward trades generally netted out, so they did not take large short positions in the VOC, but their official ownership of shares was nevertheless insufficient to legally justify their forward sales. These were, in other words, short sales and would not be enforced by the courts. I will argue in the second section that the participants of the forward market were aware of this. They therefore established a private enforcement mechanism that replaced the rule of law. This mechanism, which was in force in the

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9 Diego d’Aguirre, Duarte Rodrigues Mendes, Antonio do Porto and Isaac Gomes Silvera, for example, referred to a judgment of the Court of Holland in a claim they submitted to the Court of Aldermen (18 September 1672): SAA, Notaries, inv. nr. 4075, pp. 186-9.
10 Cf. Chapter 2; particularly Figure 2.1 (p. 76) and Figure 2.2 (p. 77).
12 SAA, PIG, inv. nrs. 687-8. The values given are market values.
13 Interestingly, their nominal position in the VOC fluctuated between f9,000 and f27,000 in the years 1680 and 1681: NA, VOC, inv. nr. 7072, fo. 235, 383. Unfortunately, their forward trading activity during these years is unknown.
trading clubs\textsuperscript{15}, was based on the traders’ reputations and the condition that each participant benefited from subordinating to it.

The line of argument is thus as follows: court judgments in the first decades of the seventeenth century created a level of legal certainty that induced the entry to the market of new groups of traders. The subsequent growth could no longer fit within the legally approved boundaries of the market and created the need for a sub-market where a private enforcement mechanism was in force and where access restrictions made sure that only trustworthy traders could participate.

The two parts of this chapter build on two different fields of historiography. The first deals with the development of commercial law in Northwestern Europe and third-party enforcement of trade-related conflicts. In the province of Holland, the law consisted of a combination of Roman law and customary law, compiled by the famous jurist Hugo de Groot (Grotius).\textsuperscript{16} Gelderblom has argued that this was not a static law. The \textit{Hollandsche Consultatiën}, a seventeenth-century collection of legal advices compiled by jurists working for the provincial Court of Holland show that this court based its judgments ‘on a combination of Roman law, local and foreign customs, Habsburg ordinances, and Italian and Spanish mercantile law’.\textsuperscript{17} It is therefore interesting to study the sentences of the Court of Holland in detail – in pronouncing judgments on share-trade-related court cases this court’s judges drafted the world’s first securities law. Banner has traced the origins of Anglo-American securities regulation from the eighteenth century onwards. He analyzed attitudes towards the trade in securities and studied how these influenced the regulation of the trade. Banner found that although the societies and the authorities in England and the United States were often ill-disposed towards the trade in financial securities, leading to bans on the trade of specific derivatives, the courts kept enforcing the contracts. They based their judgments on general legal concepts rather than on the attitudes of the general public, thus giving legal protection to the trade.\textsuperscript{18}

The second focuses on private enforcement mechanisms. The most influential works on this topic have focused on international trade. The difficulty of monitoring business partners abroad required a high level of commitment by all partners in-

\textsuperscript{15} See, for a general introduction on trading clubs, chapter 1, section 1660s – Trading clubs on page 45 ff.
\textsuperscript{16} R.C. van Caenegem, \textit{Geschiedkundige inleiding tot het privaatrecht} (Ghent 1981) 51.
\textsuperscript{17} Gelderblom, \textit{Confronting violence and opportunism}, 366.
\textsuperscript{18} Banner, \textit{Anglo-American securities regulation}. 
volved. Greif has shown for the eleventh-century trade between North Africa and Italy that traders organized themselves in coalitions. This coalition-forming created a situation in which even traders who did not know each other personally were willing to trade with one another. The system worked so well because all participants benefited from it.\textsuperscript{19} The share market cannot be seen as an example of international trade, though. While foreign traders occasionally participated, the majority of the traders came from Amsterdam. But the trading community did not consist of a homogeneous group of traders either – particularly after the Sephardic community of Amsterdam started participating in the market from the 1640s onwards. Hence the forward market was characterized by a large heterogeneous group of traders who put very large amounts of money at stake. How did they make sure that all members of the trading community lived up to their agreements?

Court cases form the most important source for this chapter’s analysis. A short review of the procedure of civil litigation in the Dutch Republic is therefore indispensable. Conflicts concerning share transactions on the Amsterdam market would usually first come up before the local court of Amsterdam. The archives of this court have been lost, however, so my argument is based on the extended sentences that are available in the archives of the Court of Holland and – to a lesser extent – the High Council. The Court of Holland was the court of appeal for cases that had come up before one of the local courts in Holland. After this court had pronounced judgment, litigants could appeal to the High Council, but this court was neither more authoritative, nor more influential; the only difference was that the High Council also had jurisdiction over the province of Zeeland.\textsuperscript{20}

The near total loss of the archives of the local court of Amsterdam is a pity, but these sources are not indispensable for my argument, since my main interest concerns the development of jurisprudence on share trade. It is to be expected that the local court of Amsterdam could very well deal with most of the share-trade-related conflicts. There are indications that share traders went to the Amsterdam court to exact payment or delivery of a share from their counterparties\textsuperscript{21}, but these were probably not

\textsuperscript{20} M.-Ch. le Bailly and Chr. M.O. Verhas, \textit{Hoge Raad van Holland, Zeeland en West-Friesland (1582-1795): de hoofdlijnen van het procederen in civiele zaken voor de Hoge Raad zowel in eerste instantie als in hoger beroep} (Hilversum 2006) 7.
\textsuperscript{21} This is based on the \textit{insinuaties} in the protocols of Amsterdam’s notaries. An \textit{insinuatie}, or notarial summons, was usually the first step in legal action. The protocols of 1672 and 1688, two years with
the most interesting cases. However, if one of the parties was convinced that there were several possible interpretations of a lawsuit, he would appeal the judgment of the lower court to the Court of Holland. Hence, those cases are particularly important for a reconstruction of the development of a legal framework.

The procedure of litigation before the Court of Holland was as follows. The plaintiff first submitted a petition to the court, listing a short summary of the case and his principal arguments. The court then, provided that it had approved the petition, entered the case onto the scroll \(\text{rol}\), the list of cases to be dealt with by the court. Thereafter, the plaintiff could summon the defendant to appear in court. The plaintiff’s solicitor then submitted his claim to the court, to which the defendant could respond within two weeks’ time. Thereafter, both parties could submit a rejoinder, which could take another four weeks in total. Both parties had now set forth their positions, but the court could ask the parties to submit more information or to prove a certain argument.

Naturally, both the plaintiff and the defendant adduced evidence, for example attestations before a notary, questionings of witnesses and other forms of written evidence such as brokers’ records.\(^{22}\) Conflicting parties often asked other merchants or brokers – people, in sum, who were demonstrably well informed about the share trade – to attest before a notary public.\(^{23}\) They attested, for instance, the customary way of trading shares or the share price at a certain date. They could also give a report as a witness.\(^{24}\) Case files that contain all written evidence are available for some lawsuits.\(^{25}\)

When the court had collected all the necessary information, it pronounced judgment. A report of the court procedure was included in the collection of extended sentences of the Court of Holland. This collection, as well as the collection of extended sentences of the High Council, contains reports of all cases in which the judges took some sort of action. These collections thus also contain lawsuits in which, for instance, the judges referred the litigants to mediators. This means that my sources are

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22 See for the types of evidence accepted by the courts: Gelderblom, *Confronting violence*, 272-3.
23 Cf. Van Meeteren, *Op hoop van akkoord*, 172-3. According to Van Meeteren, for an attestation to be credible, it had to be attested to a notary public as soon after the event had happened as possible: Van Meeteren, *Op hoop van akkoord*, 181.
24 E.g. NA, Case files, inv. nr. II139.
25 NA, Case files. Normally, litigants received the contents of the case file back when the court procedure was finished. However, some litigants did not collect the case files.
not biased by the selection procedure of the clerk of the court. It is true, however, that
my method of research excludes those cases that reached amicable settlement before
the courts’ mediators. Again, this is not problematic: I have checked the reports of
mediators in the years after 1672—when the price crash led to a high number of con-
flicts—but the share-trade-related cases in these reports deal with relatively minor
issues. The litigants whom the lower courts had ruled against simply appealed to the
Court of Holland to postpone the execution of the lower court’s judgment. Subse-
quently, the Court of Holland realized that it was no use to start a full court procedure
again and referred the litigants to mediation.26 So, to conclude, the extended sen-
tences of the provincial courts of Holland are the right sources to use for an analysis of
the development of jurisprudence on share-trade-related issues.

The legal framework

Conflicts about share transactions could involve three legal concepts: ownership and
the transfer of ownership, endorsement* and the terms of settlement of a transaction.
The courts of the province of Holland refined jurisprudence on these concepts by
judging on a number of court cases. All three legal concepts will subsequently be ad-
dressed in the following subsections.

Ownership and transfer of ownership

Clear rules for share ownership and the transfer of share ownership were crucial for
the development of the secondary market. Under Roman-Dutch law, the general rule
for transfer of title was that ownership passed on the basis of delivery. Since VOC
shares were not payable to the bearer, however, they could not be physically deliv-
ered, so a special rule for the conveyance of ownership was needed. The directors of
the VOC were aware of this and therefore they included a rule that regulated how in-
vestors could ascertain and convey share ownership in the subscription book of 1602.
Shareholders owned those shares registered under their account in the capital books
that were kept by the company bookkeeper. Title to a share could be transferred by
means of official registration.27 This procedure was similar to the procedure for trans-

26 NA, Court of Holland, inv. nrs. 1552, 1559.
27 The first page of the Amsterdam chamber’s subscription book stated this rule. Transcript of this page
(followed by the entire book): Van Dillen, Aandeelhoudersregister, 105-6. See also chapter 1 section 1602 –
The subscription on page 17 ff.
ferring unmovable goods such as real estate. Hence, the law also classified shares as unmovable goods.28

Van Balck vs. Rotgans (1622) marks an important step in clarifying the rules for ownership of a share. This case made clear that a shareholder could be certain that the shares listed on his account in the capital book of the VOC were his full property and that previous holders of the ownership of the share could not lay claims on it. The judges thus confirmed the legal force of the capital books. The plaintiff in this lawsuit, Allert van Balck, believed that he had right of vindication on the share he had transferred to Jan Hendricksz. Rotgans. Right of vindication means that the transferor of a good could reclaim ownership if the good had not been fully paid for or if he could prove that the purchaser had practiced fraud at the time of the transaction – for example by hiding his impending insolvency or fleeing from town without paying.29 Van Balck had transferred a share, but he never received full payment and therefore claimed the ownership of the share.

Van Balck had sold this particular share to Hans Bouwer on April 5, 1610. Bouwer, for his part, sold a similar share to Rotgans on the next day. Rotgans approached Van Balck on the exchange, saying that he wanted to receive his share, but Van Balck replied that he did not know Rotgans and that he had traded with Bouwer. Rotgans then explained the situation and told Van Balck that he should transfer the share to him; he would pay him £1,000 and Bouwer would see to the payment of the remaining sum. Van Balck agreed to transfer the share, but he never received full payment: Bouwer left Amsterdam in the following days to flee from his creditors. Van Balck went to court, where he requested seizure of the share, but the Court of Aldermen refused to adjudicate this; the judges reasoned that Van Balck no longer had title to the share after he had transferred it to Rotgans. Van Balck argued that he still had the right of mortgage of the share, because he had never received full payment. In his view, he still had a claim on Bouwer’s share and hence on Rotgans’ payment to Bou-

28 The Consultatien, a famous compilation of early-modern Dutch jurisprudence, confirms that the courts treated shares as immovables in the winding up of estates: Consultatien, advysen en advertissementen, gegeven ende geschreven by verscheyden treffelijcke rechts-geleerden in Hollandt 1 (Rotterdam 1645) 77, 139-40. In England, it had been unclear after the foundation of the first joint-stock companies whether common law treated shares as real or personal property. This had implications for the transferability of shares. Subsequent incorporation acts added a clause that declared shares to be personal property: Harris, Industrializing English law, 117-8. In the Dutch Republic, there were no impediments to the transfer of unmovable goods other than the obligation to officially register a transfer.

29 De Groot, Inleidinge II Aantekeningen, 236.
Van Balck appealed the Aldermen’s decision before two higher courts, but both the Court of Holland and the High Council also ruled against him.30

The fact that Van Balck and his lawyer appealed the courts’ decisions twice indicates that this was not a clear-cut case. This lawsuit was not just about the right of vindication; Bouwer had practiced fraud, so there was little doubt that Van Balck had right of vindication. However, the courts had to balance Van Balck’s right of vindication and the rights of Rotgans, who gave the impression that he was a sincere buyer who had paid for the transfer, against each other. Rotgans was not as sincere as he had the court believe, in fact, he was in league with Rotgans, but Van Balck did not succeed in convincing the court of Rotgans’ insincerity.31 In the end, the courts favored the interests of the buyer who had purportedly done nothing wrong.

This judgment had far-reaching consequences; with it, the courts safeguarded the interests of commerce. Share trading could have been severely hampered had Van Balck won this lawsuit, because in that case a buyer of a share would always have to fear that there was still a claim on the share he had bought, which would give the seller the right to claim it back.32 This particular lawsuit, in other words, took away legal doubts that could have restrained investors from buying shares on the secondary market for VOC shares.

Interestingly, a few years before the High Court pronounced final judgment in this case, the VOC had also recognized the potential problems of transfers of shares that had claims attached to them. The VOC feared that buyers would not only lay a claim on the seller, but also on the company. It therefore changed the share transfer regulation. From 1616 onwards, the buyer of a share had to sign a statement when the bookkeeper added the share to his account that indemnified the company against any future claims. The buyer signed that he had accepted a ‘good’ share – a real share, in other words, a share that had formed part of the capital stock since 1602 – and that he was satisfied with it.33

31 Van Dillen, ‘Isaac le Maire’, 121.
33 Van Dam, Beschryvinge 1A, 144-5.
By extension, the same legal principle that the court applied in Van Balck vs. Rotgans was in force in the forward trade. In a series of judgments, the courts ruled that forward buyers could also expect the underlying asset of their forward contract to be a real share. There was no need to explicitly state in the contract that the share had to be free of any claims; the judges held the opinion that that was a matter of course. The Court of Holland thus clarified the procedure of transfer of ownership in a forward transaction.

The lawsuits that dealt with these matters were to a large extent similar to Van Balck vs. Rotgans, although they look much more complicated at first sight. These court cases all started with Pieter Overlander who found out that the share he had received in settling a forward contract was fraudulent. The seller had transferred a non-existent share to his account, which the company bookkeeper had knowingly executed. The complication of this case lies in the fact that many more traders were involved in this transaction; the transfer of a share to Overlander had settled the contracts of a chain of forward traders. The following description of the lawsuit shows that these chains of traders could prove problematic if conflicts arose between one pair of traders within the chain.

Pieter Overlander had bought a forward with a ƒ3,000 VOC share as underlying asset from Abraham Abelin on 13 March 1609, but the share was eventually transferred to him by Hans Bouwer. Abelin had a similar transaction (a forward with the same nominal value and settlement date) with Dirck Semeij, who for his part had bought a similar forward from Maerten de Meijere. When the contract was due for delivery, Semeij asked De Meijere to transfer the share directly to Abelin. De Meijere, however, was to receive a share from Jacques van de Geer and Hans Pellicorne and therefore he asked Abelin if he would be satisfied if they delivered the share to him. Abelin referred the question to Overlander. But Overlander had just heard a rumor that Van de Geer and Pellicorne were on the verge of going bankrupt, so he refused to accept this deal, unless De Meijere would explicitly indemnify him against any trouble. De Meijere then proposed to let Hans Bouwer, who also owed a share to him, deliver the share instead. Overlander accepted this deal and Abelin also trusted that this transfer would successfully settle all the abovementioned transactions: he traded with Bouwer on a daily basis. Overlander had the share transferred to Frans van Cruijsbergen, his brother-in-law, and each pair of traders in the chain came together once more to tear up the contracts and pay possible price differences.
A little later, however, the transferred share was found to be fraudulent, so Overlander started litigation. He summoned Abelin – the only trader he had a rightful claim on – to appear in court and demanded that Abelin replace the share with a good one. What makes this lawsuit so interesting is that the Amsterdam Court of Aldermen requested Overlander to give evidence under oath that he had been promised a ‘sincere and sound’ share on contracting this transaction. His claim would be dismissed if he did not take the oath, which reveals that the lower court did not acknowledge the legal principle that the buyer of a good can always expect this good to be delivered according to the conditions in the contract.

Abelin’s lawyer had made this particular point an important part of the defense, arguing that Overlander had requested to be indemnified against any troubles if Van de Geer and Pellicorne would have transferred the share, but he had not made any such requests when Abelin proposed to let Bouwer transfer the share. Overlander had thus, according to the defense, accepted the share without reservations.

Overlander did not hesitate to make his declaration under oath and the court consequently sentenced Abelin to replace the share. Abelin then summoned his original counterparty Semeij, and the Aldermen pronounced the same judgment. Hence, the chain of share transactions became mirrored in a chain of court cases before the Court of Aldermen. Furthermore, every one of the defendants appealed the Aldermen’s sentences to the Court of Holland, resulting in another chain of court cases (this time the other way around: Abelin vs. Overlander, Semeij vs. Abelin, etc.), but the appeals were disallowed. The judges of the Court of Holland did not require the litigants to make declarations under oath. It was clear for them that the forward traders could expect to be delivered a real share. The Court of Holland thus clarified the procedure of transfer of ownership for forward transactions.

34 Abraham Abelin vs. Pieter Overlander, NA, Court of Holland, inv. nr. 632, nr. 1614-50 and NA, High Council, inv. nr. 708, 30 July 1616. Dirck Semeij vs. Abraham Abelin, NA, Court of Holland, inv. nr. 632, nr. 1614-73 and NA, High Council, inv. nr. 708, 30 July 1616. Maerten de Meijere vs. Dirck Semeij, NA, Court of Holland, inv. nr. 632, nr. 1614-76 and NA, High Council, inv. nr. 708, 30 July 1616. The traders also appealed the judgments of the Court of Holland to the High Council, but the trial before the High Council did not reveal any new information. The motivations behind these appeals were of a more pragmatic nature: since Bouwer had fled from Amsterdam, the last person in the chain – Semeij – had no one to lay a claim on. He therefore tried once more to be released from De Meijere’s claim.

The cases concerning the chain of transactions starting with Pieter Overlander are almost identical; the Court of Aldermen pronounced judgment around late November or early December 1611, the appeals came up before the Court of Holland in 1614 and before the High Council in July 1616. There was a similar lawsuit between Maerten de Meijere and Pieter van Duynen. Van Duynen had traded with Maerten de Meijere, who had an unsettled transaction with Bouwer. The share transfer
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The lawsuits about the fraudulent share also show that the clearing of multiple forward contracts worked inefficiently in 1609. These pairs of traders first negotiated their transactions individually and then tried to arrange settlement of multiple contracts with a single share transfer. However, to accomplish that, they constantly had to consult their initial counterparty about whether he agreed that a third party would deliver the share to him. These traders could have spared themselves this trouble had they chosen to resell their original contracts rather than to draft new contracts for each transaction.

It is not surprising, however, that traders were hesitant to assign their forward contract to third parties before maturity; simple assignment of a financial claim to a third party meant that the trader would once again have to make an assessment of counterparty risk. He would have to consider, in other words, whether the new counterparty would live up to his agreements. The risk that the assignor did not inform the assignee about all the conditions of the contract further complicated assignation — there was always a chance that there was something wrong with the contract. Moreover, the assignee did not get in personal contact with the counterparty of the contract if he bought the claim from someone else and this might hide important information about the counterparty’s reputation and creditworthiness. In sum, the assignee might be hesitant to take over the contract under these conditions.

Contract negotiability was the solution to these problems. This concept was introduced in the Netherlands under the reign of Emperor Charles V in 1541 with the intention of enabling merchants to assign letters obligatory more easily. The legal title to a contract could now be assigned to the assignee by way of endorsement, which literally means that the assignee puts his name on the back (en dos) of the original contract. If a debtor defaulted, his creditor not only had recourse to the debtor, but also to previous assignor. This implied that the legal status of the contract improved with every endorsement: the longer the list of endorsers, the more people the ultimate trader in line would have recourse to.35

from Bouwer to Van Duynen settled both transactions. Maerten de Meijere vs. Pieter van Duynen, 27 January 1612, NA, Court of Holland, inv. nr. 626, nr. 1612-6.

Endorsement also worked in derivatives transactions. The endorser wrote on the contract that he assigned his rights to the endorsee and both men signed the endorsement.\textsuperscript{36} The lawsuit Adriaen van der Heijden and Daniel van Genegen \textit{vs.} Abraham Abelijn (1614) shows the legal force of endorsements and the advantages of endorsements over the chains of traders that figured in the previous example. The conflict between Van der Heijden and Van Genegen and the defendant emerged after the plaintiffs refused to deliver a share. In the original contract, Van der Heijden sold a forward to Van Genegen. Less than a month after the contract date, on 3 April 1610, Van Genegen resold this claim to Abelijn. The resulting transaction was thus as follows: Abelijn would receive a share from Van der Heijden on 17 March 1611, the settlement date of the contract, and pay 150\% for it. On the settlement date, Abelijn and Van der Heijden disagreed over how to settle the contract: Van der Heijden preferred a monetary settlement, whereas Abelijn requested that the share be delivered. They were unable to come to an amicable settlement and Abelijn started litigation. He summoned both Van der Heijden and Van Genegen to appear in court, arguing that they were both contractually obliged to deliver the share. Van Genegen replied that there was no ground to summon him, because Van der Heijden was sufficiently solvent to comply with the contractual obligations. The judges disagreed with him, however; they ruled that both Van der Heijden and Van Genegen were individually responsible to deliver the share.\textsuperscript{37}

To summarize, Abelijn had a legal claim on the holder of the contract, but also on the original counterparty who had resold his claim. It made no difference to the judges that there were no bankruptcies or insolvencies involved in this case. The Amsterdam merchants were probably already familiar with the advantages of endorsements before the Court of Holland pronounced this judgment, but it would nonetheless have made potential share traders aware of the advantages of endorsements. Abe-

\textsuperscript{36} For an example of an endorsed contract, see the options contract in the case file of the lawsuit between Willem Hendrick Tammas \textit{vs.} Antonio Alvares Machado, 1689, NA, Case files, IIT39. The earliest endorsements I have found date from 1609. In the chaotic aftermath of Le Maire’s bear raid, many forward traders wanted to be sure who their counterparty was. Several notarial deeds show that forward contracts had been resold, e.g. \textit{insinuatie} 10 August 1610, SAA, Notaries, inv. nr. 120, fo. 99v; \textit{insinuatie} 16 August 1610, SAA, Notaries, inv. nr. 209, fo. 181v; \textit{insinuatie} 21 August 1610, SAA, Notaries, inv. nr. 120, fo. 99v-100r.

\textsuperscript{37} Adriaen van der Heijden and Daniel van Genegen \textit{vs.} Abraham Abelijn, NA, inv. nr. 633, nr. 1614-118.
lijn’s position was similar to that of Overlander and other unwary buyers on the share market, but his legal position was much better. Furthermore, Abelin did not have to make an assessment of the reputation and creditworthiness of his contractual counter-party Van der Heijden, because he also had recourse to Van Genegen. This judgment spread knowledge about the benefits of endorsements on the share market and might very well have persuaded traders to participate in the forward market rather than in the spot market, because endorsed forward contracts were stronger than spot contracts; it was a significant advantage to have recourse to several counterparties.

With this legal concept clearly defined, the legal framework was in place. From the 1630s onwards, traders knew the legal force of the various transactions that they could choose among. Also, property rights were now clearly defined. Finally, and most importantly, participants in the secondary market for VOC shares could predict how the courts would judge in certain types of conflict. This legal certainty reduced the chance of becoming involved in a court case and thus reduced transaction costs.

TERMS OF SETTLEMENT

The outcome of share-trade-related court cases was not always to the benefit of the development of trade. Court judgments of the early seventeenth century confirmed that it was possible to delay the settlement of a forward contract for a seemingly indefinite period of time. Buyers simply delayed requesting delivery of the share until it became profitable for them to do so. Until that moment, they had postponed settlement, for instance under the pretext that they needed some more time to gather the money needed for the settlement. The seller, meanwhile, could urge the buyer to accept the share, but he could not legally force him to do so. When the buyer finally requested delivery of the share, the seller could try to object to this claim by arguing that it was unreasonable to suddenly request delivery months after the original settlement date, but the buyer’s case stood stronger in court: the judges would decide on the basis of the original forward contract, which stated that a share should be delivered at a certain price after a certain term, without a limitation to the contract’s validity. Hence, they would enforce the contract.38

38 E.g. Isaac le Maire vs. Louis del Beecke, NA, Court of Holland, inv. nr. 633, 1614-134 and Isaac le Maire vs. Louis del Beecke, NA, Court of Holland, inv. nr. 664, 1624-64. (In spite of the fact that the same litigants appear in both cases, these are different lawsuits.)
It is not hard to see how this hampered the development of trade: it was a rather uninviting prospect for forward sellers that their counterparties could simply linger over settlement until the deal would become profitable to them. The market itself found a solution for this problem. From the 1630s onwards, it became customary to settle a forward contract within three weeks after the original settlement date. Forward buyers could use this period to gather the money needed for the share transfer or to try to find a counterparty willing to roll over the contract. This market custom did not have the status of a legal rule, however. In the early 1640s, for instance, traders already referred to it in their plea before court, but the judges took no notice of it.\(^39\) The market itself, however, did regard it as an official rule; stockbrokers Sebastiaen da Cunha and Hendrick van Meijert attested before a notary in 1659 that a buyer lost title to the forward contract after the customary settlement term had expired.\(^40\) This was thus an example of self-regulation: the trading community expected its members to settle their contracts within three weeks’ time after expiry of the contract. The absence of conflicts over contract settlement that came before a higher court after 1641 suggests that the traders complied to a large extent with this informal rule.

In the mid-1680s, share trader Samuel Cotinho decided to test this rule’s legal status once again. His lawsuit against Vincent van Bronckhorst is especially interesting, because its case file, containing various attestations, survived. This case thus shows how the judges in the Dutch Republic took statements of market practitioners into consideration. The case went as follows: on 25 June 1683, Van Bronckhorst sold a forward with a f12,000 VOC share as underlying asset to Cotinho. Three days after the settlement date (1 September 1683), Van Bronckhorst notified Cotinho that he wanted to deliver the share, but Cotinho answered that he was unable to receive it. Van Bronckhorst then asked a notary to serve an insinuatie containing a request to deliver the share to Cotinho. Cotinho was not at home, though, but his maid listened to the insinuatie. Since no subsequent action was taken on the side of Cotinho, Van Bronckhorst asked permission of the Court of Aldermen to sell the share on the market instead, which the Aldermen granted. A little later, however, Cotinho started litigation; he argued that it was unreasonable that Van Bronckhorst had sold the share to

\(^{39}\) E.g. Philips de Bacher vs. Frederick van Schuijlenburch (20 December 1641), NA, Court of Holland, inv. nr. 739, nr. 1641-166. This lawsuit shows that the market custom had already become established, but the court did not yet rule accordingly: the buyer had waited a month before he requested delivery of the share, but the court still ruled in favor of his claim to get the share delivered.

\(^{40}\) Attestation (11 July 1659), SAA, Notaries, inv. nr. 2207, p. 95.
a third party before the customary term for settling forwards had expired. Cotinho held a strict view of the market custom. In his opinion, forward buyers held title to an unsettled contract until the customary term had expired whatever happened in the meantime. He thus regarded it as an extension to the contract’s term and wanted to see whether the court would approve of this view.

Both litigants adduced attestations to support their case. A group of regular traders attested on 4 October 1683, only days after the insinuatie, that it was customary to settle contracts after two or three weeks, but traders should immediately settle once the counterparty had requested settlement through an insinuatie. The attestation used by Cotinho’s solicitor was dated 27 October 1684: a number of brokers stated before a notary that the customary settlement term was three or four weeks. In the end, the court ruled in favor of Van Bronckhorst: it had not been unreasonable that he had sold the share before the customary term for delivery had expired.41

The market custom regarding the term for contract settlement did thus not have legal status. A contract neither lost its validity after the term had expired42, nor were traders able to claim title to a contract on the basis of the market custom. But the courts’ judgments did not stop the market from using its customary practices for the settlement of contracts. To be sure, from the end of the 1680s onwards, the market custom was explicitly mentioned on the printed forward contracts used in the forward trade. And, what is more, this extra clause imposed a fine on non-compliance with the market custom. A trader who settled his contract with a ƒ3,000 share as underlying asset too late was fined ƒ7.50 per day. I have found no evidence of traders actually paying this fine, but the fact that this stipulation was included on the printed contracts suggests that it was widely accepted by the trading community. Interestingly, moreover, the clause also stipulated that a contract would lose its validity should its holders refrain from settling it within three months.43 The trading community thus imposed its own rules where legal enforcement proved to be inadequate. In the case of terms of settlement, self-regulation facilitated the settlement procedure. Without it, however, the market would still have functioned. The next section will address a self-regulatory

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41 Samuel Cotinho vs. Vincent van Bronckhorst, 1689, NA, Case files, IIK98.
42 See footnote 39.
43 Forward contract 14 June 1688, SAA, PIG, inv. nr. 654. The bottom lines of this contract stipulated that it should be settled within 20 days after the original settlement date. If the seller did not comply, the price would thereafter be reduced by a quarter of a percentage point a day. If the buyer did not comply, the price would be increased by a quarter of a percentage point a day. In any case, the contract would lose its legal validity three months after the original settlement date.
mechanism that was a sine qua non for the scale of forward trading of the second half of the seventeenth century.

**Private enforcement mechanism**

The ban on short-selling of February 1610\(^{44}\) severely constrained forward trading. Traders were allowed to sell forward contracts only with shares they legally owned as underlying asset, but share traders continued short-selling and the authorities felt compelled to repeat the ban several times. In these reissues, the first of which appeared in 1621, they explicitly stated that brokers were not allowed to negotiate contracts that contained a renunciation clause. Moreover, any contract containing such a clause would be declared null and void. Apparently traders negotiated contracts in which they explicitly renounced the ban on short-selling.\(^{45}\)

The use of contracts containing a renunciation clause was nevertheless widespread. All examples of printed contracts that I have found, dating from different periods throughout the seventeenth century, contain such a clause. To be sure, even Vincent van Bronckhorst, himself a councilor of the High Council, did not hesitate to use them.\(^{46}\) The judges understood that they could not pronounce the entire forward share trade illegal, so they approved the use of the contracts containing a renunciation clause, which shows once more that the courts were disposed to supporting the development of the share trade.

At the same time, however, the Dutch legal system did not enforce short sales. So if a litigant could convincingly prove that his counterparty had not owned the share that was subject of a forward sale at the contract date and during the contract’s term, the court would declare the contract null and void. In his case against Andries Polster in 1633, Severijn Haeck convinced the judges of the Court of Holland that Polster had not owned the underlying asset of the forward he had sold him during the contract’s term. The court declared the contract null and void, even though Polster had immediately made good tender of the stock after Haeck announced that he was about to start litigation.\(^{47}\)

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\(^{44}\) See chapter 1, section 1609-10 – Isaac le Maire on page 24 ff.

\(^{45}\) Smith, _Tijd-affaires_, 57-60. See, for the bans, footnote 14.

\(^{46}\) Samuel Cotinho _vs._ Vincent van Bronckhorst, 1689, Court of Holland, Case files, IIK98.

\(^{47}\) Severijn Haeck _vs._ Andries Polster (28 March 1633), NA, Court of Holland, inv. nr. 703, nr. 1633-36-1. The court pronounced the same judgment in a similar case between Severijn Haeck and Dirck van der Perre, which came up in court on the same day: Severijn Haeck _vs._ Dirck van der Perre (28 March 1633), NA, Court of Holland, inv. nr. 703, nr. 1633-36-2.
A lawsuit that came before court 34 years later indicates that traders were fully aware of the fact that the courts would never enforce short-sale contracts. The defendants in the case started by Sebastiaen da Cunha did not even bother to appear in court. Just like Haeck, Da Cunha wanted to be relieved from his contractual obligations. In 1665, he had bought a number of forward contracts with VOC shares with a nominal value of several thousands of guilders as underlying assets from a total of nine counterparties. During the terms of these contracts the Second Anglo-Dutch War (1665-7) broke out, leading to a relative price decrease of 35% (from around 490% in 1664 to 315% in September/October 1665). Da Cunha realized that he was about to lose a lot of money were he to comply with the contracts and he therefore tried to be relieved from his contractual obligations by taking these contracts to court. The report of the court’s session does not state the details of Da Cunha’s contracts, but assuming that he traded one forward contract with each of the nine defendants in this lawsuit, that all shares had a nominal value of f3,000 and that the price dropped by 175 percentage points after he bought the forwards, he could have lost up to f50,000 on these forwards. The defendants probably knew that Da Cunha could produce convincing evidence and therefore they realized that they had nothing to win by going to the courtroom in The Hague. They were sentenced by default after the fourth no-show; the court declared the contracts null and void.

Da Cunha’s strategy could have posed a big threat to the growth of the forward market: many forward traders owned only a small or zero amount of shares in the capital books of the VOC. Hence, if they sold forwards, these were likely to be short sales, which gave their counterparties the opportunity to legally renege on their purchases. Consequently, forward short sellers would always lose on their transactions: on expiry of the contract, buyers, whose behavior was solely influenced by economic con-

48 During the period June-August 1664, the share price fluctuated between 490 and 500%: SAA, Merchants’ accounts, inv. nr. 39, fo. 73.
49 SAA, Deutz, inv. nr. 291, fo. 46.
50 This would have been the maximum possible loss per share.
51 Sebastiaen da Cunha vs. Michiel Rodrigues Mendes c.s. (27 May 1667), NA, inv. nr. 784, nr. 1667-60. This case was brought before the Court of Holland in first instance, but it is unclear to me why Da Cunha did not take the case to the Court of Aldermen first. Foreign merchants were allowed to litigate directly before the Court of Holland, but a plausible explanation may also be that one of the defendants (Joan Corver) was himself one of the judges in the Court of Aldermen in 1666: Johan E. Elias, De Vroedschap van Amsterdam, 1578-1795 I (Haarlem 1903) 521. Names of the defendants: Michiel Rodrigues Mendes, Isaac Mendes da Silva, Moses de Silva (also acting on behalf of Moses Machado, Joan Corver, Louis Gonzales d’Andrada, Manuel Lopes Villareal, Gerrit van Beuningen and Cornelis Lock).
Da Cunha could prove that the forward contracts were short sales because the sellers had placed the shares on Da Cunha’s ‘time account’ in the course of the terms of the contracts, thus trying to make the sales appear legal.
siderations, would comply with their contracts only if this would be profitable to them. Such was not the case, however. Very few forward buyers – only two examples can be found in the archives of the Court of Holland – employed this strategy to avert losses. It could be possible that these cases were seldom brought before the provincial court, for this was no complicated juridical matter. Hence there could have been little ground to lodge an appeal against the local court’s judgment. The archives of the Court of Aldermen cannot be consulted to check this, but there are no signs whatsoever that these cases ever existed: a logical first step for litigation on the basis of the bans on short-selling was to request aanwijzinge in the VOC capital books (a buyer could ask a seller to show his ledger in the capital books to verify whether he was the legal owner of a share) via a notarial insinuatie. Such insinuaties appear frequently in the protocols of the notaries of Amsterdam around 1610, but they are largely absent thereafter. The conclusion must thus be that forward buyers rarely reneged on their contracts.

The explanation for this observation is that a private enforcement mechanism, based on honor, reputation and peer pressure, was in place on the secondary market for VOC shares. This mechanism prevented forward buyers from reneging. Only in cases where the amount of money at stake was too high (as in Da Cunha’s case) did this private enforcement mechanism fail.

The strongest form of the private enforcement mechanism was in place in trading clubs like the Collegie vande Actionisten and a somewhat weaker form in the resconstre meetings. It should be stressed, moreover, that honor and reputation were very important personal assets in early modern societies in general, so some form of a reputational regulatory mechanism was always in place in early modern trade. The contracts used in the forward trade emphasized the importance of a trader’s honor: the names of the parties to the contract were preceded by the word ‘honorable’ and the traders were called ‘luyden met eere’ (men of honor) in the penalty clause at the bot-

52 Please note that Sebastiaen da Cunha vs. Michiel Rodrigues Mendes c.s. was not an appeal case either, cf. footnote 51.
53 These buyers did not ask for aanwijzinge because they wanted to be relieved from their contractual obligations – this was before the ban on short-selling – but because they feared that they would miss out on the first dividend distribution if their counterparties did not actually own the shares they had sold.
54 See, e.g., Goldgar, Tulipmania.
tom of the contracts. The personages in Joseph de la Vega’s *Confusión de confusiones* also repeatedly stress the importance of honor and reputation in the share trade.\(^{55}\)

This was all very well, but the participants of the high-risk forward market, where deals were made that were unenforceable by law, wanted to be sure that their counterparties not only said they were honorable men, but that they also acted accordingly. The correspondence between Lord Londonderry (born Thomas Pitt, Jr.) and his cousin George Morton Pitt, dating from 1723, shows that there were indeed a large number of disreputable traders on the Amsterdam exchange who preferably bought forwards and received option premiums. If it turned out that they would suffer a loss on these contracts, they simply reneged. George Morton Pitt added to this that merchants of Amsterdam did not trade with these particular traders; only traders who were unaware of their bad reputations (e.g. foreigners) would enter into a transaction with them.\(^{56}\) But how could a trader have information about the creditworthiness and reputation of all possible counterparties?

First of all, brokers gathered information about as many traders’ reputations as possible\(^{57}\), but the regular meetings of the *rescontre* and the trading clubs provided an even better solution to the reputation problem. The strength of these meetings was that a large number of traders were regularly present at the same location. Information about the reputations of the participants of the trading sessions spread quickly amongst the traders present and a trader with a bad name would find it hard to find counterparties for his transactions. Moreover, traders learnt to know each other very well during the sessions, all the more so since reciprocal transactions occurred frequently.

The private enforcement mechanism of the trading clubs went one step further. These clubs were private meetings and participants could be expelled.\(^{58}\) Once a

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\(^{55}\) When, for example, the shareholder explains the use of options, he says: ‘Even if you do not gain through the “opstes” the first time, you do not risk your credit, and do not put your honor in danger.’ De la Vega, *Confusión de confusiones*, 77 (p. 24 in the 1688 edition, p. 7 in Kellenbenz’ English edition).


\(^{57}\) See chapter 1, section 1630s and 1640s – Intermediation and a changing composition of the trading community on page 36 ff.

share trader was allowed in – it is very well possible that new members were admitted only after the intercession of one of the members – he had the possibility to perform a large number of possibly profitable transactions. If a trader failed to live up to the standards of the club, however, he would be excluded from the trading sessions and his chances of participating in the trading sessions were gone.\textsuperscript{59} It was thus in the interest of all parties involved to live up to their agreements.\textsuperscript{60} An attestation by four frequent participants stresses the force of honor and reputation within the community that traded in the clubs: they attested how the traders in the clubs rarely used written contracts for their transactions. Oral agreements sufficed for transactions between honorable traders.\textsuperscript{61}

As mentioned briefly in chapter 1, it is moreover likely that the trading sessions in the clubs were chaired by some kind of committee that could also adjudicate in conflicts that arose from dealings in the meetings. The committee received its authority from the community of participants – a trader who entered the trading clubs also subordinated himself to the adjudicating board. The principal indication for my hypothesis that there such committees were present in the trading clubs is that the main trading club was called \textit{Collegie vande Actionisten}. The word ‘collegie’ implies that there was some sort of governing body that supervised the meetings. Moreover, the name of this club was similar to that of a typical tulip-trading club that regularly met during the Tulipmania of 1636-7: \textit{Collegie vande Blommisten}. Goldgar has shown that during that winter, most of the trade in tulip bulbs took place in inns, where \textit{collegien} (e.g. \textit{Collegie vande Blommisten}) presided over the trading sessions. The \textit{collegien} acted as committees of tulip experts who made the rules for the trade that took place in the inns, organized continuous auctions and also adjudicated in conflicts between bulb traders. Peer pressure, which weighed heavily in the small community of bulb traders, gave the \textit{collegie} its power.\textsuperscript{62}

Interestingly, a known regulation of the eighteenth-century \textit{rescontre} meetings explicitly mentions the presence of a secretary, an official who could impose fines and

\textsuperscript{59} Without the possibility of exclusion, the free-rider problem arises. The possibility of exclusion was therefore key to the functioning of the trading clubs. James M. Buchanan, ‘An economic theory of clubs’, \textit{Economica} 32 (1965) 1-14.
\textsuperscript{60} North, \textit{Institutions}, 33.
\textsuperscript{61} Attestation 9 January 1704, SAA, Notaries, inv. nr. 6956, fo. 23. Names of the attestants: Henri Alvares, Jacob Gabay, Moises Coronel and Daniel Dias de Pas. It is unclear why these four men made this attestation before notary Van Velen.
\textsuperscript{62} Anne Goldgar, \textit{Tulipmania: money, honor, and knowledge in the Dutch Golden Age} (Chicago 2007) 191-2.
a board of ‘deciseurs’ that adjudicated in conflicts. Presumably, the rescontre participants had recognized the advantages of an adjudicating board for the settlement sessions. So, although direct evidence of regulatory and adjudicating bodies is lacking for the trading clubs of the second half of the seventeenth century, the presence of such bodies in similar trading clubs in the 1630s and the eighteenth century makes a reasonable case for their presence in the share-trading clubs.

The trading club ledgers of the Portuguese Jewish merchants Jacob Athias and Manuel Levy Duarte give proof of the effectiveness of these clubs. They show the immense turnovers of Athias and Levy Duarte during each session, but equally interesting is the fact that they regularly traded forwards with Christian participants of these sessions, whereas I have found few examples of high-risk (i.e. forward) transactions between members of different religious communities on the market outside the trading clubs. The peer pressure and the reputational mechanism in the trading clubs persuaded traders to enter into a transaction with traders they did not know very well. But for reasons mentioned before, the large turnover in the trading clubs did not lead to an increase in traders trying to legally renege by suing their counterparties for short selling. What is more, even insolvent traders rarely tried to become relieved of their forward deals by asking the courts to declare their forward purchases null and void. They chose the lesser of two evils: an honorable bankruptcy was apparently less bad than a dishonorable reneging. And perhaps they hoped to be able to return to the exchange shortly after their bankruptcy had been dealt with.

Sebastiaen da Cunha was probably not indifferent about his reputation either, but the losses he was about to incur on the forward contracts that were subject of the 1667 lawsuit were simply too high. And that was exactly the weakness of the private enforcement mechanism based on traders’ reputations: there was a limit to the extent to which the participants of the trading clubs valued their reputations. If the share

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63 Smith, *Tijd-affaires*, 135-8. It is unknown when this regulation was put into effect, but this is likely to have happened before 1 May 1764.
64 SAA, PIG, inv. nrs. 687-8.
65 In June 1672, Balthasar da Cunha (not to be confused with Sebastiaen da Cunha – cf. footnote 51), one of the largest stock traders on the Amsterdam exchange, transferred the ownership of two houses and a /6,000 share in the Enkhuizen chamber of the VOC to Miguel Netto de Paiva: deed of conveyance and transfer (28 June 1672), SAA, Notaries, inv. nr. 4074, fo. 485-7. He had obviously financial difficulties, but did not renege on his forward deals.
66 Frans Pardicque became insolvent in October 1688. He was unable to fulfill his obligations because he did not receive payment on an unsettled transaction with Coenraet van Beuningen. He did not, however, try to let the courts declare his forward purchases null and void, but rather let his counterparties lay claims on his insolvent estate: record containing the unsettled forward deals of Pardicque (22 October 1688), SAA, Notaries, inv. nr. 4135, fo. 712-4.
price fell very steeply, traders had to make a difficult assessment: they could choose to renege and lose their carefully accumulated reputation, or they could comply with their contracts and lose a large amount of money. In Da Cunha’s case, the scale tipped toward reneging. And indeed, the price fall during the term of his forwards was clearly exceptional: the years 1664-5 witnessed the largest decline in share price in the history up until that time of the VOC.

Only seven years later, however, the share price experienced an even greater fall. In 1672, the share price fell to 280% in June/July, whereas shares had been sold for 560% in July 1671. For a number of traders, this price fall was so large as to outweigh an unblemished reputation. Unsurprisingly, then, all instances of insinuaties explicitly mentioning the intention to renege on the basis of the States of Holland bans date from this year. Antonio Lopes de Castro Gago, alias Jacob Lopes de Castro Gago, for example, answered to two insinuaties served upon him that the sellers had sold him nothing but ‘air’ and that he would obey the official bans. He had bought two forwards in January 1672 with a nominal value of £3,000 each at 485 2/3% and 487%. In early May 1672, the settlement date for both contracts, the share price stood at 325%. He would thus have lost almost £10,000 on these forwards.

The price crash of 1688, when the VOC shares subsequently lost 18% of their market value in late August and another 9.5% in October, did not lead to a similar pattern of reneging forward traders. The most plausible explanation is that this price fall was not large enough for the traders to give up their good reputations on the market; the 1688 price decrease was only half as large as its 1672 counterpart. Another, related, explanation is that there was no reneging trader in 1688 who gave the initial impetus for a chain of non-compliances. The participants of the clubs all traded with each other and all tried to keep their portfolios balanced. The individual forwards were risky transactions, but the traders reduced their portfolio risk by netting out their transactions with opposite transactions. This system worked well until one of the traders pulled out. The portfolios of all of his counterparties would then no longer be balanced, which increased their incentive to also renege on one or more of their li-

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66 See, for a more detailed discussion of the 1672 price crash, p. 161 ff.
67 Insinuaties Raphael Duarte (18 May 1672) and Manuel Mendes Flores (19 May 1672): SAA, Notaries, inv. nr. 2239, fo. 183, 199. Gaspar Mendes de Garvois gave a similar answer to an insinuatie requesting him to receive a share at 530% on 1 July: insinuatie Antonio and Miguel Guiteres Martines (1 July 1672): SAA, Notaries, inv. nr. 2239.
68 The share price decreased from 560 to 460 in August and further to 416 in October. See, for a more detailed discussion of the 1688 price crash, page 60 ff.
69 See, for a more detailed analysis, chapter 4.
abilities, thus possibly starting a chain of unfulfilled transactions. The 1672 price crash thus highlighted the weak spot of the trading clubs with their private enforcement mechanism: it was founded on the honor and reputation of its participants, but consequently, when one of the participants chose to pull out, the system became unbalanced and there were no formal institutions to fall back on.

Conclusions

Together, the legal framework and the private enforcement system provided a high level of certainty that the market would consummate all transactions. The two systems may seem to have been in place on fully separate markets; one where the rule of law was indispensable for the development of the market and the other where the rule of law was redundant because informal institutions replaced it. Yet they were strongly connected to each other. The private sub-market could never have developed into an effective trading place without a clear legal framework being in place and hence the two parts are inextricably intertwined. I have already mentioned the direct connection between the two: the coming into place of a clear legal framework contributed to the entry of new groups of participants on the share market and thus necessitated the emergence of sub-markets where there were no restrictions as to the amount of shares that could be traded – the market simply grew too large for its legal boundaries. But the sub-markets were in yet another way connected to the principal share market.

It was important that the traders in the trading clubs knew that they participated in a sub-market where other rules applied than on the principal market. This is a marked difference from the trade in tulip bulbs during the Tulipmania. This trade also took place in clubs, the so-called collegies, but there did not exist a principal market for bulbs with the same level of development as the market for VOC shares. This became problematic when the bulb price collapsed in early 1637. Many tulip traders went to court to extort payment from their counterparties, but the courts refused to pronounce judgment in tulip-trade-related lawsuits.70 Thus emerged a situation where

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70 Goldgar, Tulipmania, 237-51. E.H. Krelage, Bloemenspeculatie in Nederland: de Tulpomanie van 1636-'37 en de Hyacintenhandel 1720-'36 (Amsterdam 1942) 96. The reasons why the courts refused to do so remain unclear. Goldgar eagerly uses the courts’ refusal to support her argument that civic harmony stood at the basis of the Dutch society: the courts encouraged traders to settle their conflicts in the friendliest way. It is undoubtedly true that arbitration and mediation were important in the Dutch legal system, but why would the courts refuse to attend to these cases? Their number could have clogged the system, as Goldgar put forward, but these cases were all similar: one judgment would have created a precedent. I think the principal motivation for the courts was that the tulip trade had attracted large numbers of new participants only months before the bubble burst. The courts might have argued that the tulip
traders believed that the transactions they had entered into would be enforced, but as it turned out, their trades were not considered to be legally valid. Consequently, traders lost confidence in the institutions of the tulip trade.

In the case of the share trade, however, the participants knew that the courts would not enforce the transactions they performed within the trading clubs. They were aware of this situation because the legal framework of the share trade had been clearly defined in the first decades of the seventeenth century. Hence, traders were well aware that there was a chance that their counterparties in the trading clubs would renege, and they implicitly accepted this as soon as they started participating themselves. They did not lose confidence in the system in the event that one trader reneged. However, the reneging traders of 1672 did make the trading community realize how risky the forward trade was. The next chapter will discuss how traders used different types of transactions to manage and control the risks of their trades.

Appendix – Short summary of court cases

<table>
<thead>
<tr>
<th>Inv. nr.</th>
<th>Year – nr.</th>
<th>Plaintiff</th>
<th>Defendant</th>
<th>Legal concept</th>
<th>Short summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>626</td>
<td>1612-6</td>
<td>De Meijere</td>
<td>Van Duynen</td>
<td>Transfer of ownership</td>
<td>Buyers may expect shares transferred to them to be genuine and freed from any claims.</td>
</tr>
<tr>
<td>632</td>
<td>1614-50</td>
<td>Abelijn</td>
<td>Overlander</td>
<td>Transfer of ownership</td>
<td>Idem Additionally, there is no need to explicitly ask for indemnification against any future troubles.</td>
</tr>
<tr>
<td>632</td>
<td>1614-73</td>
<td>Semeij</td>
<td>Abelijn</td>
<td>Transfer of ownership</td>
<td>Idem</td>
</tr>
<tr>
<td>632</td>
<td>1614-76</td>
<td>De Meijere</td>
<td>Semeij</td>
<td>Transfer of ownership</td>
<td>Idem</td>
</tr>
<tr>
<td>633</td>
<td>1614-118</td>
<td>Van der Heijden and Van Genegen</td>
<td>Abelijn</td>
<td>Endorsement</td>
<td>All endorsers are individually responsible for compliance with a contract, even if the endorsee is solvent.</td>
</tr>
<tr>
<td>633</td>
<td>1614-134</td>
<td>Le Maire</td>
<td>Del Beecke</td>
<td>Terms of settlement</td>
<td>A contract does not lose its validity over time.</td>
</tr>
<tr>
<td>664</td>
<td>1624-64</td>
<td>Le Maire</td>
<td>Del Beecke</td>
<td>Terms of settlement</td>
<td>A contract does not lose its validity over time.</td>
</tr>
<tr>
<td>703</td>
<td>1633-36-1</td>
<td>Haeck</td>
<td>Polster</td>
<td>Upholding of the ban on short-selling</td>
<td>Short-sale contracts are null and void.</td>
</tr>
<tr>
<td>703</td>
<td>1633-36-2</td>
<td>Haeck</td>
<td>Van der Perre</td>
<td>Upholding of the ban on short-selling</td>
<td>Idem</td>
</tr>
<tr>
<td>784</td>
<td>1667-</td>
<td>Da Cunha</td>
<td>Rodrigues</td>
<td>Upholding of the Idem</td>
<td></td>
</tr>
</tbody>
</table>

contracts were invalid because the new entrants to the market were unaware of its rules and customs; more experienced traders might have misled them to pay the exorbitantly high prices.
| 60 | Mendes c.s. | ban on short-selling |
## Table 3.2 Court of Holland, Case files

<table>
<thead>
<tr>
<th>Inv. nr.</th>
<th>Year</th>
<th>Plaintiff</th>
<th>Defendant</th>
<th>Legal concept</th>
<th>Short summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>IIK98</td>
<td>1689</td>
<td>Cotinho</td>
<td>Van Bronckhorst</td>
<td>Terms of settlement</td>
<td>There are limits to a contract's validity: a buyer cannot reverse his decision after the seller has made good tender of stock, but he has refused to receive it.</td>
</tr>
</tbody>
</table>

## Table 3.3 High Council, Extended sentences

<table>
<thead>
<tr>
<th>Inv. nr.</th>
<th>Year</th>
<th>Plaintiff</th>
<th>Defendant</th>
<th>Legal concept</th>
<th>Short summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>708</td>
<td>1616</td>
<td>Abelijs</td>
<td>Overlander</td>
<td>Transfer of ownership</td>
<td>Buyers may expect shares transferred to them to be genuine and freed from any claims. There is no need to explicitly ask for indemnification against any future troubles.</td>
</tr>
<tr>
<td>708</td>
<td>1616</td>
<td>Semeij</td>
<td>Abelijs</td>
<td>Transfer of ownership</td>
<td>Idem</td>
</tr>
<tr>
<td>708</td>
<td>1616</td>
<td>De Meijere</td>
<td>Semeij</td>
<td>Transfer of ownership</td>
<td>Idem</td>
</tr>
<tr>
<td>715</td>
<td>1622</td>
<td>Van Balck</td>
<td>Rotgans</td>
<td>Ownership</td>
<td>Seller has no right of vindication on a share that has been transferred in the capital books, but which had only partly been paid for. Recognition of the legal force of the capital books.</td>
</tr>
</tbody>
</table>