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Courting conflict : managing Dutch East and West India Company disputes in the Dutch Republic

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Courting Conflict

Managing Dutch East and West India Company disputes in the Dutch Republic

PROEFSCHRIFT

ter verkrijging van de graad van Doctor
aan de Universiteit Leiden,
op gezag van Rector Magnificus prof. mr. C.J.J.M. Stolker,
volgens besluit van het College voor Promoties
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door
Kate Jean Ekama
geboren te Kaapstad, Zuid-Afrika
op 24 october 1986

Promotor:	Prof. dr. Cátia Antunes
Co-promotor:	Dr. Karwan Fatah-Black
Promotiecommisie:	Prof. dr. Michiel van Groesen
	Prof. dr. Egbert Koops
	Dr. Justyna Wubs-Mrozewicz, *University of Amsterdam*
	Dr. Bram van Hofstraeten, *Maastricht University*

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List of Abbreviations

NL-HaNA	National Archive, The Hague
SAA	*Stadsarchief Amsterdam*; City Archive Amsterdam
TASTD	Trans-Atlantic Slave Trade Database

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Introduction

The Dutch East India Company (VOC) and Dutch West India Company (WIC) are not often considered as litigants. Principally, the companies are renowned as instruments of war, trade and colonisation in the Indian and Atlantic Oceans.[1] In the Republic, they were investment opportunities and the VOC in particular embodied and encouraged innovation in corporate form and financial instruments.[2] The companies were major employers of Dutch and migrant labour in the Republic: millions of employees set sail on company ships as sailors and soldiers, and the minority took up positions as high-ranking functionaries to administer company rule and conduct trade. In the company ports, towns and lodges established in their charter areas, both companies profited from the forced labour of enslaved people.[3] Through free and forced labour, and via exchange and trade conducted worlds away, the companies supplied luxury goods, exotic artefacts and diverse merchandise to markets in the Republic and across Europe, facilitating changes in European production and consumption.[4] These undertakings produced tension and outright opposition, which to date has received little scholarly attention.[5] Yet, just in the

[1] Femme S. Gaastra, *The Dutch East India Company: Expansion and Decline* (Zutphen: Walberg Pers, 2003); Henk den Heijer, *De geschiedenis van de WIC* (Zutphen: Walberg Pers, 2002); Charles R. Boxer, *The Dutch Seaborne Empire 1600-1800* (London: Hutchinson & Co, 1977); Piet Emmer and Jos Gommans, *Rijk aan de rand van de wereld: De geschiedenis van Nederland overzee 1600-1800* (Amsterdam: Uitgeverij Bert Bakker, 2012); Gerrit Knaap, "De 'core business' van de VOC. Markt, macht en mentaliteit vanuit overzees perspectief," (Universiteit Utrecht Oratie, 2014).

[2] J. G. van Dillen, *Het oudste aandeelhoudersregister van de kamer Amsterdam der Oost-Indische Compagnie* ('s-Gravenhage: Martinus Nijhoff, 1958); Oscar Gelderblom, Abe de Jong, and Joost Jonker, "An Admiralty for Asia: Business organization and the evolution of corporate governance in the Dutch Republic, 1590-1640. Isaac le Maire and conflicting conceptions about the corporate governance of the VOC," in *Origins of shareholder advocacy*, ed. Jonathan Koppell (New York: Palgrave Macmillan, 2011); Guiseppe Dari-Mattiacci et al., "The Emergence of the Corporate Form," *Journal of Law, Economics and Organization* 32, no. 2 (2017); Lodewijk Petram, "The world's first stock exchange: How the Amsterdam market for Dutch East India Company shares became a modern securities market, 1602-1700" (PhD, University of Amsterdam, 2011).

[3] Jan Lucassen, "A Multinational and its Labor Force: The Dutch East India Company, 1595-1795," *International Labor and Working-Class History* 66 (2004); Roelof van Gelder, *Het Oost-Indisch avontuur: Duitsers in dienst van de VOC (1600-1800)* (Nijmegen: SUN, 1997); Kerry Ward, *Networks of Empire: Forced Migration in the Dutch East India Company* (New York: Cambridge University press, 2009); Nigel Worden, *Slavery in Dutch South Africa* (Cambridge: Cambridge University Press, 1985). W. Klooster, "De bootsgezellen van Brazilië," *Tijdschrift voor Zeegeschiedenis* 33, no. 2 (2014); Henk den Heijer, *Goud, ivoor en slaven. Scheepvaart en handel van de Tweede Westindische Compagnie op Afrika, 1674-1740* (Zutphen: Walburg Pers, 1997); Cornelis Ch. Goslinga, *The Dutch in the Caribbean and in the Guianas, 1680-1791* (Assen/Maastricht: Van Gorcum, 1985).

[4] Maxine Berg et al., eds., *Goods from the East, 1600-1800: Trading Eurasia* (Basingstoke: Palgrave Macmillan, 2015); Janet Blyberg et al., eds., *Asia in Amsterdam: The culture of luxury in the Golden Age* (Salem/Amsterdam: Peabody Essex Museum/Rijksmuseum, 2015); Daniel Strum, *The Sugar Trade: Brazil, Portugal and The Netherlands (1595-1630)* (Stanford: Stanford University Press, 2013).

[5] Research on the ways in which the companies were challenged has tended to focus on illegality and in particular, on the ways in which private merchants and company employees eroded the VOC and WIC's monopolies. For a recent contribution, see Karwan Fatah-Black and Matthias van Rossum, "De Nederlandse smokkelhandel, 1600-1800," *TSEG/Low Countries Journal of Social and Economic History* 13, no. 1 (2016). This is discussed at length in Chapter 3.

Republic alone, the companies faced opposition to their creation, to the shape in which they were maintained by charter, and to their dealings with competitors, employees, shareholders, and merchants. One expression of this opposition was litigation. Men and women sued and were sued by the VOC and the WIC in the courts in Holland and Zeeland. It is these cases which the following chapters address.

That both companies were embroiled in legal disputes is evident from the records of the municipal, provincial and supra-provincial courts in Holland and Zeeland. While company histories run into the millions of pages, these histories have generally ignored the court records. Dutch overseas expansion, as conducted by the VOC from its inception in 1602 and the WIC from 1621 onwards, precipitated conflicts which were pursued to the highest judicial level in Holland and Zeeland. What types of conflicts arose from the Dutch Republic's overseas expansion? And how were they managed in the Republic? In the chapters which follow I will answer these questions focussing on a specific court, namely the High Court of Holland, Zeeland and West- Friesland, and a specific set of court cases, being those which involved the Dutch East or West India Companies as one of the parties.

From conflict resolution to conflict management

Scholars of legal and economic history have analysed mechanisms of conflict resolution, and in particular conflicts of a commercial nature. Generally, as Alain Wijffels points out, how conflicts were ended has been the focus amongst economic historians, based on the understanding that conflicts had to be resolved in order for merchants to continue and indeed expand their trade.[6] Formal and informal institutions played a crucial role in reducing transaction costs and facilitating commercial exchange by providing the means of resolving conflicts.

Scholars debate why certain institutions emerged when they did and what drives institutional change. Douglass North's work has been field-defining. He famously defined institutions as

> the humanly devised constraints that structure political, economic and social interaction. They consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights). Throughout history, institutions have been devised by human beings to create order and reduce uncertainty in exchange.[7]

Why such institutions emerge, and change, has been ascribed to conflict by some scholars, and competition by others. Sheilagh Ogilvie has argued that conflicts over the distributive

[6] Alain Wijffels, "Introduction: Commercial quarrels - and how (not) to handle them," *Continuity and Change* 32, no. 1 (2017).
[7] Douglass North, "Institutions," *Journal of Economic Perspectives* 5, no. 1 (1991): 97.

effects of institutions affected which institutions emerged and survived.[8] The critical junctures approach, of Darren Acemoglu and James A. Robinson, also highlights the importance of conflict and the role of politics in which institutions are present.[9] Critical junctures are periods of uncertainty during which there is the opportunity for radical institutional change. According to Giovanni Capoccia, during these relatively short periods of contingency, agency is very important in bringing about change. Agents and political decision-making during critical junctures shape the institutional direction which is chosen.[10]

Some scholars contend that the state plays a crucial role in the emergence and maintenance of institutions. A strong state is central to both North's and Ogilvie's arguments. Other scholars have argued that institutions developed in the absence of strong states. Avner Greif argues that private order solutions emerged to solve commercial conflicts within a coalition, in the absence of third party contract enforcement, namely a court system.[11] Ogilvie and Jeremy Edwards contend that it was not an either or: private order institutions operated in concert with a legal system.[12]

Recently, Oscar Gelderblom has entered this debate: he argues that competition between cities to provide an environment attractive to merchants drove institutional development. His argument brings specificity to North's suggestion that competition was an important factor in institutional development and the consequent lowering of transaction costs in The Netherlands and England.[13] Gelderblom argues that urban governments were motivated to adapt their legal, commercial and financial institutions by the potential benefits – market concentration, and taxation opportunities among them – of attracting merchants to and keeping them in their cities.[14] In this way, competition among cities drove institutional adaptation. Gelderblom points out that Amsterdam did not follow the institutional path chosen by other commercial cities. Rather than allowing foreign merchants to settle disputes according to the laws of their home countries, in consular courts, Amsterdam responded to the influx of merchants in the late sixteenth and early seventeenth century by setting up institutions that were open-access, also

[8] Sheilagh Ogilvie, *Institutions and European Trade: Merchant guilds, 1000-1800* (Cambridge: Cambridge University Press, 2011), 2, 39, 40, 417.
[9] Daron Acemoglu and James Robinson, *Why Nations Fail: The origins of power, prosperity and poverty* (London: Profile, 2013), Ch. 3.
[10] Giovanni Capoccia, "Critical junctures and institutional change," in *Advances in Comparative-Historical Analysis*, ed. James Mahoney and Kathleen Thelen (Cambridge: Cambridge University Press, 2015), esp. 147-151.
[11] Avner Greif, "Reputation and coalitions in Medieval Trade: Evidence on the Maghribi traders," *Journal of Economic History* 49, no. 1 (1989). Avner Greif, "The Maghribi traders: A reappraisal?," *Economic History Review* 65, no. 2 (2012).
[12] Jeremy Edwards and Sheilagh Ogilvie, "Contract Enforcement, Institutions, and Social Capital: The Maghribi traders reappraised," ibid.
[13] Douglass C. North, "Institutions, transaction costs, and the rise of merchant empires," in *The Rise of Merchant Empires: Long-distance trade in the Early Modern World, 1350-1750*, ed. James D. Tracy (Cambridge: Cambridge University Press, 1990), 26-27. North contrasts the path chosen in England and The Netherlands to Spain and Portugal and France.
[14] Oscar Gelderblom, *Cities of Commerce: The institutional foundations of international trade in the Low Countries, 1250-1650* (Princeton: Princeton University Press, 2013).

termed generalised, meaning that they were not limited to certain groups of people based on profession, creed, or ethnicity.[15] One such institution was the Amsterdam Chamber of Insurance and Average, discussed below.

Oscar Gelderblom makes these arguments specifically for the city of Amsterdam. However, open-access courts were not limited to Amsterdam, or even Holland. The legal system in both Holland and Zeeland was constituted by open-access courts at municipal, provincial and supra-provincial level. This may have been the result of following Amsterdam's lead. On the use of these institutions, Gelderblom makes the point that legal proceedings were costly to merchants, in terms of time and money, and possibly also reputation. Thus, he claims that merchants avoided using courts to settle their disputes, choosing instead other formal and informal mechanisms of commercial conflict resolution. One of the popular choices was arbitration which Gelderblom categorises as non-judicial. Not only was arbitration quicker and cheaper than a lawsuit, but it was also an arena in which the arbiters could follow legal prescriptions, or not, according to their discretion. Gelderblom contends that merchants would have valued this flexibility.[16] The idea that merchants seldom went to court to resolve their disputes is often repeated, but infrequently proven, as Alain Wijffels hinted when he questioned just how widespread avoidance was among disputing merchants.[17]

Gelderblom argues that central courts were marginal to commercial conflict resolution; instead it was city courts in commercial centres which played the important role of innovation and adaptation to new trade structures, new financial instruments, and a heterogeneous pool of litigants. He thus assigns to cities the initiatives which North has argued were characteristic of increasingly strong central governments – "the adaptation of institutional arrangements to the needs of merchants."[18] Based on notarial deeds relating to the business transactions of the Portuguese Nation in Amsterdam, Gelderblom has suggested that the central courts were not of great importance for commercial conflict resolution. Merchants proceeded to the central courts, namely the Grand Council in Malines and the High Court in The Hague, only infrequently, despite the privileges granted to foreign merchants to commence litigation in first instance in higher courts. Based on the notarial deeds, he concludes that the number of merchants who resolved disputes in the High Court was "very small".[19] Recent research in the archive of the High Court has brought new insight into how and over which issues the Nation proceeded in the High Court. In that court they sued fellow members of the Nation as well as others, in cases which ranged from small financial stakes to much weightier conflicts.[20]

Consultation of the High Court sentences might go some way in reducing Gelderblom's pessimism about the role of central courts in commercial conflict resolution.

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[15] Ibid.

[16] Ibid., 105, 108. Gelderblom adds that urban governments would have favoured arbitration because it relieved the court system of cases.

[17] Wijffels, "Commercial quarrels," 1-2.

[18] Gelderblom, *Cities of Commerce*, 126.

[19] Ibid., 132.

[20] Rob Post, "De Portugese natie voor de Hoge Raad. De rol van identiteit, netwerken, conflictbeslechting en instituties in de periode 1675-1725" (MA, Universiteit Leiden, 2015).

Merchants resident in the Dutch Republic, and beyond, used the High Court to appeal sentences of lower courts, and less frequently, to hear cases in first instance. In addition, the court was an important arena of conflict resolution for commercial companies.[21] Disputes involving the Dutch East and West India Companies produced over one hundred and fifty High Court sentences in the seventeenth and eighteenth centuries.[22] Based on the High Court's records themselves, then, there is an indication that the court was an important location of conflict resolution for commercial disputes.

While economic historians have been concerned with the relationship between conflict resolution, institutions, the state, and economic growth, legal historians have a different approach. From the point of view of legal historians, conflict resolution has been the focus of studies on the development of law in the context of plurality, and on procedure, overlapping and competing jurisdictions.[23] An enduring debate among legal scholars and historians has been whether or not *lex mercatoria* existed as a customary, private legal system across Europe in the early modern period. The recent consensus is that it did not.[24] Scholars have pointed to the existence of consular courts in which foreign merchants resolved conflicts among themselves according to their own customs and laws as evidence of the lack of the so-called law merchant.[25]

In a recent special issue of *Continuity and Change*, Alain Wijffels, Justyna Wubs-Mrozewicz, and contributors implement the idea of conflict management, rather than conflict resolution, as a more inclusive way of analysing commercial conflicts. This is based on the premise that even if particular conflicts between parties are ostensibly resolved by means of formal or informal mechanisms, the underlying conflict of interest is not necessarily resolved, leaving the potential for the same point of conflict to arise again in future. Conflict management, thus defined, involves ways of dealing with the underlying conflict so that the parties can continue their commercial activities. In the introduction to the special issue, Alain Wijffels states that conflict management is "a process imposing restraint on the opposing parties while allowing sufficient leeway for business to be continued."[26] According to Wijffels, conflict management encompasses

[21] In the early seventeenth century, parties named in sentences included the United Company Zeeland which preceded the VOC, the Magellan Company, the Australia Company, the Northern Company (*Noordsche Compagnie*) and the VOC and the WIC.

[22] That is not to say that there were over 150 discrete cases. The breakdown of sentences and litigants is dealt with in Chapter 2.

[23] Wijffels, "Commercial quarrels," 2.

[24] Ibid. Justyna Wubs-Mrozewicz also states this. Justyna Wubs-Mrozewicz, "Conflict Management and Interdisciplinary History: Presentation of a new project and an analytical model," *TSEG/Low Countries Journal of Social and Economic History* 15, no. 1 (2018): 97. According to Emily Kadens, proponents of the *lex mercatoria* myth, as she calls it, have been slow to accept historians' research showing that it did not in fact exist. She goes so far as to argue that merchants did not actually need a transnational law because they could make use of brokers. Emily Kadens, "The myth of the customary law merchant," *Texas Law Review* 90 (2012). See also Francesca Trivellato, "'Amphibious Power': The law of wreck, maritime customs, and sovereignty in Richelieu's France," *Law and History Review* 33, no. 4 (2015): esp. 919 n. 919. Compare Vito Piergiovanni, ed. *From lex mercatoria to commercial law* (Berlin: Duncker & Humbolt, 2005).

[25] Sabine C. P. J. Go, "The Amsterdam Chamber of Insurance and Average: A new phase in formal contract enforcement (late sixteenth and seventeenth centuries)," *Enterprise & Society* 14, no. 3 (2013): 523-524.

[26] Wijffels, "Commercial quarrels," 1 (Abstract).

resolution, but is broader. In this view, arbitration is not necessarily a non-institutionalised alternative to conflict resolution. In practice, arbitration, mediation and litigation could be part of the same strategy of conflict management.[27]

Current research projects led by Justyna Wubs-Mrozewicz and Louis Sicking implement this concept of conflict management. Wubs-Mrozewicz's NWO-funded research project focuses on conflicts which arose in the commercial cities of northern Europe in the thirteenth to sixteenth centuries.[28] To analyse commercial conflicts, Wubs-Mrozewicz has developed a "process-oriented model of historical conflict management". Conflict management, in her view, consists of five elements, which could occur and reoccur in different combinations: prevention, provocation, maintenance of status quo, escalation and de-escalation, and resolution. Wubs-Mrozewicz is clear that these were options that could be employed at different points in a conflict; they were not stages of a conflict. She comments that "[c]onflicts, when seen from a historical perspective, often appear to be highly complex or even messy."[29] In his research project, Louis Sicking focuses on Atlantic Europe in the same period. His project utilises the concept conflict management but he defines it in terms of strategies. According to Sicking, conflict management consists of three elements: conflict resolution via formal or informal mechanisms; conflict enforcement; and conflict avoidance.[30]

Conflict management is a useful concept to apply to the way in which the Dutch East and West India companies dealt with disputes in the political and legal institutions of the Dutch Republic. Firstly, the insight that conflicts were not necessarily resolved, even by sentences in formal legal proceedings, is applied to company related conflicts. The same conflict, or type of conflict, could reocur. Secondly, that conflicts did not progress through stages but were managed by the use of various elements which were part of a strategy helps to explain the different ways in which disputes unfolded. In the chapters which follow the focus is, for the main part, on litigation, but where possible the formal legal proceedings are placed in the context of other tools employed by the disputants. How the conflict was managed before and/or after legal proceedings is brought into view. Taking this wider view of conflict which goes beyond resolution brings to the fore the role of the States General in company conflicts which arose out of overseas expansion.

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[27] Ibid., 6.

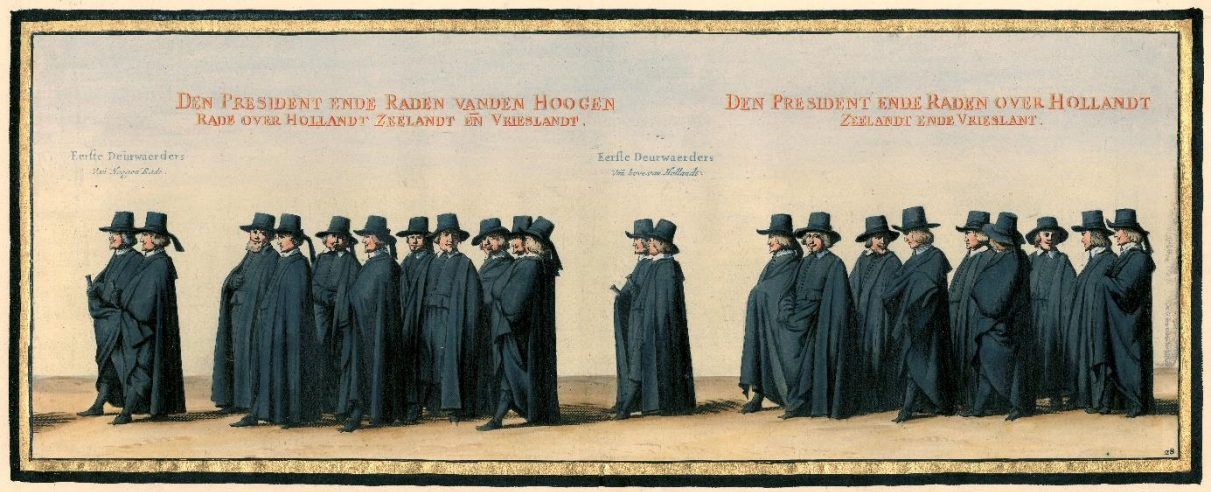
[28] Justyna Wubs-Mrozewicz's NWO-funded research project is entitled 'Managing multi-level conflicts in commercial cities in northern Europe (1250-1570)' http://justynawubs-mrozewicz.blogspot.nl/ (accessed 2017-10-13).

[29] Wubs-Mrozewicz, "Conflict Management and Interdisciplinary History," 92, 102-103. Wubs-Mroewicz's research places an important and innovative emphasis on the actors who were instrumental in managing conflict. These conflict managers were successful multi-taskers who combined commercial and political roles and could draw on networks of men who did the same. This comes to the fore in her case-study of the Giese family. Justyna Wubs-Mrozewicz, "Conflict Managers in Medieval and Early Modern Northern Europe: Maritime networks of knowhow (1300-1600)," in *Datini-Ester Advanced Seminar* (Prato, Italy: Unpublished conference paper, 2018).

[30] Louis Sicking's NWO-funded research is entitled 'Maritime conflict management in Atlantic Europe'. See https://www.universiteitleiden.nl/en/research/research-projects/humanities/maritime-conflict-management-in-atlantic-europe (accessed 2017-10-13) for the project description.

Importantly, research in conflict management is at the interface of economic, legal and political history. Bridging the gaps between the fields is needful: Wubs-Mrozewicz laments the "strikingly little dialogue" between them.[31] The High Court archive is the ideal place to explore this interaction for the case of the Dutch Republic.

Figure 1: The President and Councillors of the High Court and the Court of Holland



Pieter Nolpe, De begrafenisstoet van Frederik Hendrik, 1647. After Pieter Jansz Post, 1651. Rijksmuseum, Amsterdam.

The High Court of Holland, Zeeland and West-Friesland

The High Court (*Hoge Raad van Holland, Zeeland en West-Friesland*) was established in 1582 and existed until 1795.[32] It was established as the successor to the Great Council of Malines (*Grote Raad van Mechelen*) which had become almost inaccessible during the Dutch Revolt.[33] Lack of access to a high court was borne heavily by the people of Holland and Zeeland who had enjoyed the right to appeal to the court since the early fifteenth century. Marie-Charlotte LeBailly and Christel Verhas point out that Hollanders and Zeelanders had a propensity to be strongly litigious. The number of appeals to the Great Council was relatively high in relation to other provinces; during the fifteenth and sixteenth centuries the number of appeals per capita was twice as high in Holland compared with Flanders.[34] The States General intended that the High Court (*Hoge Raad*)

[31] Wubs-Mrozewicz, "Conflict Management and Interdisciplinary History," 99.

[32] It is necessary to clarify that the *Hoge Raad* under discussion here is not the same court as the *Hoge Raad* which exists in the Netherlands today. As van Rhee states, they have only the name in common. The present *Hoge Raad* was established during the nineteenth century. Van Rhee, 'Foreword' in M.-Ch. LeBailly and Chr. M. O. Verhas, *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: Verloren, 2006), 7.

[33] Ibid., 9.

[34] Ibid., 9-10. How this interacts with the reputation of the Portuguese Nation of Amsterdam as being a particularly litigious group warrants scrutiny. Who were the Hollanders who went to court so frequently? Was

function as the replacement of the Great Council in both competence and jurisdictional reach. This should have had as consequence that people from all the provinces of the Northern Netherlands could appeal to the High Court, meaning the court would be in effect a supra-provincial judge. But the States of Holland established the High Court as the highest court in that province, with the view to allowing other provinces to recognise the jurisdiction if they wished. Zeeland did officially in 1586.[35] According to Remco van Rhee, "[b]ecause they never succeeded in giving the High Court the same function as the Great Council the position of the High Court remained rather unclear" until its removal in the late 1700s.[36] In this vein, there was competition between the High Court and its neighbour, the Court of Holland.[37] Verhas notes that the judicial organisation of each province within the Union of Utrecht was different and in combination with the situation of Revolt against the Spanish, it is not surprising that the High Court never functioned as the appellate and highest court of the whole Dutch Republic.[38] While the High Court was intended to have jurisdiction over all the provinces in the Northern Netherlands, that jurisdiction was not recognised or utilised in practice.[39]

The judicial organisation of the provinces which together formed the Dutch Republic differed from province to province, with the exception of Holland and Zeeland.[40] Justice in those two provinces comprised four levels. The lower courts consisted of, among others, the village or town courts (*dorpsgerechten*). The next rung comprised the Aldermen (*schepenbanken*), sheriff courts (*baljuwshoven*) and courts of the high Lords (*hoge heerlijkheden*). The third layer was the provincial court, that is the Court of Holland (*Hof van Holland*), while the very highest level was the appellate High Court.[41] To this hierarchy of courts must be added the subsidiary specialised courts established in Amsterdam in the first half of the seventeenth century. They were subsidiary to the

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it a specific group of people or social class? The litigious nature of the Portuguese of Amsterdam can be explained not by their Jewish heritage but by the tradition of Iberian litigation.

[35] Ibid., 11-12. Hendrik Martijn Punt, "Het vennootschapsrecht van Holland. Het vennootschapsrecht van Holland, Zeeland en West-Friesland in de rechtspraak van de Hoge Raad van Holland, Zeeland en West-Friesland" (PhD, Universiteit Leiden, 2010), 7.

[36] Original: "*Aangezien men er uiteindelijk niet in slaagde de Hoge Raad eenzelfde functie te geven als de Grote Raad bleef de positie van de Hoge Raad enigzins onduidelijk*" van Rhee's foreword in LeBailly and Verhas, *Hoge Raad*, 7.

[37] Ibid., 14.

[38] C. M. O. Verhas, "De beginjaren van de Hoge Raad van Holland, Zeeland en West-Friesland" (PhD, Universiteit Leiden, 1997), 33. It seems that the court's legitimacy was not fully accepted.

[39] On the judicial organisation of other provinces and Generality lands see B. S. Hempenius-van Dijk, *Hof van Friesland. De hoofdlijnen van het procederen in civiele zaken voor het Hof van Friesland zowel in eerste instantie als in appel*, Procesgids (Hilversum: Verloren, 2004); P. Brood and E. Schut, *Hoofdmannenkamer, sinds 1749 Hoge Justitiekamer van Stad en Lande van Groningen. De civiele procesgang ten tijde van de Republiek der Verenigde Nederlanden* (Hilversum: Verloren, 2006); Marie-Charlotte LeBailly, *Staatse Raad van Vlaanderen te Middelburg (1599-1795). De hoofdlijnen van het procederen in civiele zaken voor de Staatse Raad van Vlaanderen zowel in eerste instantie als in hoger beroep* (Hilversum: Verloren, 2007); E. J. M. F. C. Broers and B.C.M Jacobs, *Staatse Raad van Brabant* (Hilversum: Verloren, 2000).

[40] Punt emphasises the relative independence of the provinces within the Union, which was mirrored by the same loose association of cities and towns within each of those provinces. Punt, "Het vennootschapsrecht," 3-5.

[41] LeBailly and Verhas, *Hoge Raad*, 12-14. Punt, "Het vennootschapsrecht," 3-7.

Aldermen, to which bench the sentences of those courts were appealed.[42] How the jurisdictions of the Admiralties (*Admiraliteiten*) intersected with the legal framework of Holland and Zeeland was not clearly defined.[43]

Martijn Punt indicates that the competences of the High Court, which were set out in the 1582 instruction on which the court was constituted, followed the pattern of the Great Council. The High Court was principally a court of appeal against sentences passed by the Court of Holland. The court's competence also covered five other areas. Firstly, the bench heard cases in first instance between foreign merchants not resident in Holland and Zeeland. Secondly, the High Court heard cases related to shipping, but according to Punt, access to specialised subsidiary courts established in cities such as Amsterdam and Rotterdam meant that the court did not develop this competence.[44] Oscar Gelderblom's earlier mentioned conclusion that the central courts were not favoured by merchants is in line with Punt's second point. Thirdly, the High Court also dealt with property disputes (*bezitsvorderingen*) in first and last instance. In the fourth place, Punt mentions that the High Court had a role in adjudicating colonial cases, that is the cases which originated in the WIC courts and were sent to the States General for review (*herziening*). "In practice," he notes, "these review cases were referred to the High Court by the States General."[45] Finally, the High Court played a role in voluntary judgments (*willige condemnaties*). The court examined notarised contracts and then gave its approval. These were not lawsuits; rather, Punt suggests, this function of the High Court limited the number of contractual disputes which ended in litigation.[46] LeBailly and Verhas clarify the underlying cause for this reduction: the 1582 Instruction prohibited appeals of voluntary judgments.[47]

In all matters, of whatever instance, the High Court's sentence was final. Litigants did not have the opportunity to appeal against a sentence in a higher jurisdiction. However, there was a path to review open for those who felt aggrieved by the bench's decisions. Marie-Charlotte LeBailly and Christel Verhas indicate that it was the States General which provided this check on sentences passed by the High Court. However, according to Martijn Punt it was the States of Holland which granted reviews (*revisie*) of sentences, for which purpose the States commissioned an *ad hoc* bench consisting of seven legal scholars, five city pensionaries (*stadspensionarissen*), two judges from the Court of Holland, and the full bench of the High Court.[48] Sentences in revision cases from

[42] This is clear in the cases discussed in later chapters. See for instance the case involving VOC Chamber Zeeland and Jan Maertens' heirs in Chapter 6.

[43] The five Admiralties were located in Amsterdam, Rotterdam, the North Quarter (Hoorn and Enkhuizen), Zeeland (in Middelburg), and Friesland (in Dokkum). Jonathan I. Israel, *The Dutch Republic: Its rise, greatness and fall, 1477-1806*, The Oxford history of Early Modern Europe (Oxford: Oxford University Press, 1998), 295-297.

[44] Punt, "Het vennootschapsrecht," 7-8. The courts he refers to are those generalised courts for specific matters: the Chamber of Insolvencies (1643), the Chamber of Insurance and Average (1598). On the insurance chamber, and generalised as opposed to particularised courts, see Go, "Amsterdam Chamber of Insurance and Average," 515.

[45] Original: "In de praktijk werden deze revisiezaken door de Staten-Generaal doorverwezen naar de Hoge Raad." Punt, "Het vennootschapsrecht," 8.

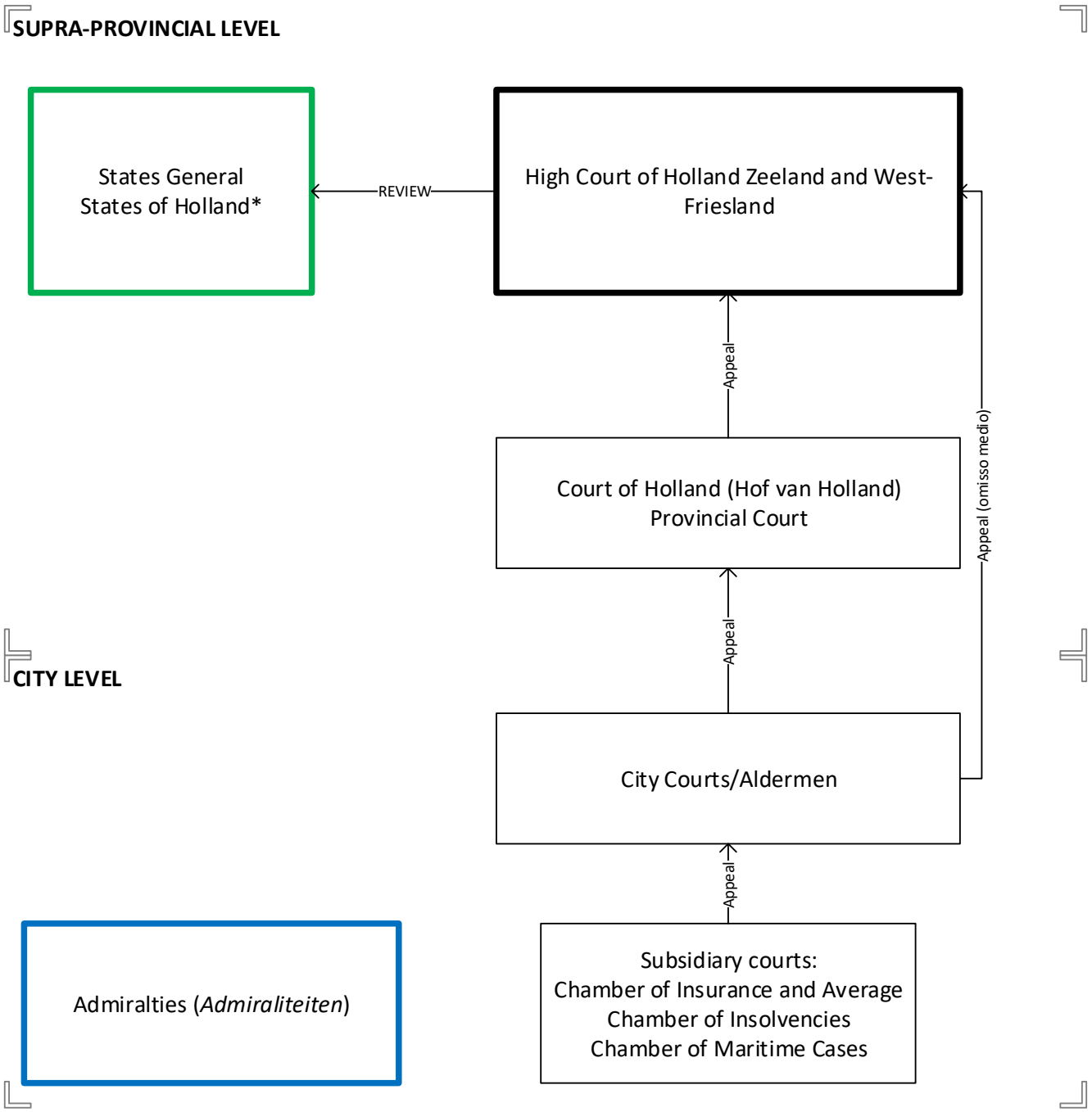
[46] Ibid., 12-13.

[47] LeBailly and Verhas, *Hoge Raad*, 14.

[48] Ibid., 12; Punt, "Het vennootschapsrecht," 8.

the 1620s and 1630s were passed in the name of the States of Holland, confirming Punt's description of the revision process.[49]

Figure 2: The legal framework of Holland and Zeeland



Based on LeBailly and Verhas, *Hoge Raad;* Punt, *Het vennootschapsrecht*. *While LeBailly and Verhas write that High Court sentences were reviewed by the States General, Punt states that it was the States of Holland which reviewed them

[49] These sentences were passed in the case between the Magellan Company and the VOC which is discussed in Chapter 2.

The bench of the High Court consisted of the president and his nine councillors (*raadsheren*), later increased to ten, assisted by two bailiffs (*deurwaarders*) and supported in administration by a clerk (*griffier*) and his substitute.[50] After the extension of the court's jurisdiction to include Zeeland, tensions arose regarding the representation of Zeeland amongst the staff. Previously, all personnel had been Hollanders but that was no longer satisfactory. The number of Zeelanders on staff was a sensitive point which hampered the nomination process.[51] Judges were appointed by the Stadholder from a list of candidates nominated by the Provincial States of Holland and Zeeland, and occupied a seat until their death, or until they took up the position of President, also a life-long appointment.[52] These men all had law degrees, most of them having received their legal training at Leiden University, fewer from the University of Utrecht, and the famous judge Cornelis van Bijnkershoek the exception, with a degree from Franeker.[53] Taking into account these three factors – appointment by the Stadholder, for life, and with legal training – the High Court bench can be considered a bench of professional judges.

One of the functions of the councillors of the High Court was to settle disputes between parties. According to LeBailly and Verhas, judges would try to bring the parties to an "amicable settlement" before the case was pending in the court.[54] This indicates that mediation was in fact institutionalised. So too was arbitration: LeBailly and Verhas indicate that settlement remained a possibility during an ongoing case.[55] This is confirmed by preliminary sentences drawn up by the court in which parties were ordered to appear before two High Court judges in order to come to an agreement. The bench recommended a sentence for the eventuality that no agreement could be reached. That the parties reach a settlement in the presence of two judges was ordered by the bench in the case between William Carmichael and the VOC which is discussed in Chapter 2. While mediation took place outside of the court and, if successful kept disputes from becoming lawsuits, it is worth reiterating that mediation and arbitration as outlined here were not extra-judicial processes but embedded within the functioning of the High Court and undertaken by the judges involved in the cases.

As an appellate court, the High Court in The Hague functioned differently to supreme courts of today. The High Court heard both appeal cases and cases in first instance. The court's examination of cases was not limited to legal technicalities but included examining facts.[56] The court required that parties substantiate their claims with evidence, the exact form of which would surely have differed depending on the nature of the case in question. But three general categories existed: *inspectie oculair*, that is

[50] LeBailly and Verhas, *Hoge Raad*, 15-17. In order to have legitimate deliberations and sentencing at least seven votes were needed; in case of absence, the bench could be completed by the Judge Advocate (*advocaat-fiscaal*), the Attorney General (*procureur-generaal*) or a member of the *Hof van Holland*.
[51] Ibid., 16. Punt also notes the very difficult negotiations around the extension of jurisdiction to cover Zeeland too. Punt, "Het vennootschapsrecht," 7.
[52] http://resources.huygens.knaw.nl/repertoriumambtsdragersambtenaren1428-1861/app/instellingen/117/# (accessed 2017-10-30).
[53] Punt, "Het vennootschapsrecht," 17.
[54] Original: "*minnelijke schikking*", LeBailly and Verhas, *Hoge Raad*, 15.
[55] Ibid.
[56] Punt, "Het vennootschapsrecht," 11-12.

inspection of the 'scene'; interrogation of witnesses; and submission of documents.[57] LeBailly and Verhas note that "[i]n the High Court the oath was also of deciding importance for establishing foundational facts." [58] Beyond that, the authors comment that the sources and founding Instruction of 1582 give no further specifications regarding acceptable evidence or the value attached to different forms.

During the seventeenth and eighteenth centuries the law by which court cases were judged was composite: regional common law was in force, as was Roman law to varying degrees in different localities. According to Ella Gepken-Jager, common law was consulted first. Only in the event that no relevant legal provisos existed there, would Roman law be applied.[59] According to Sabine Go, generalised courts, which in theory had jurisdiction over insurance and commercial disputes involving foreigners, were reluctant to apply foreign laws and so allowed the creation of particularised courts.[60]

In her research on the Chamber of Insurance and Average, Go argues that the creation of the chamber in Amsterdam marks a time of transition from particularised to generalised courts. Particularised courts, which existed in Amsterdam in the late sixteenth century, were those which served a specific group of people bound by a commonality such as religion, profession or nationality. Guild and consular courts are examples of such. Generalised courts, in contrast, served a diverse population of litigants, including foreigners. The Amsterdam Aldermen (*schepenbank*) was one such institution in the city. In other cities in the Low Countries – for instance Bruges – commercial disputes were resolved in particularised courts but as the insurance market in Amsterdam grew, the city authorities made the choice to create a generalised court to handle the conflicts rather than follow the institutional pattern of other cities. This choice was deliberate and marks a new phase in institutional arrangements for conflict resolution in the city of Amsterdam, according to Go.[61]

The High Court of Holland, Zeeland and West-Friesland was a generalised court from its inception. But it is worth noting that it functioned in a legal system which comprised generalised courts specialising in particular types of conflict. In this sense, jurisdictions at city level were not only fragmentary, but also likely overlapping. In Amsterdam in particular a number of specialised subsidiary courts were established in the early seventeenth century to lighten the load of the Amsterdam Aldermen. The Chamber of Insurance and Average was the first such court, later followed by the Chamber for Maritime Cases (*Kamer van Zeezaken*, 1641) and the Insolvency Chamber (*Desolate boedelskamer*, 1643).[62] Similar generalised but specialised courts were established in

[57] LeBailly and Verhas, *Hoge Raad*, 46.
[58] Original: "*Bij de Hoge Raad was ook de eed van doorslaggevend belang als bewijsgrond*." Ibid.
[59] Ella Gepken-Jager, "Verenigde Oost-Indische Compagnie (VOC): The Dutch East India Company," in *VOC 1602-2002: 400 Years of company law*, ed. Ella Gepken-Jager, Gerard van Solinge, and Levinus Timmerman (Deventer: Kluwer Legal Publishers, 2005), 45. For a more detailed overview of the development of law in the Dutch Republic see Randall Lesaffer, "A short legal history of the Netherlands," in *Understanding Dutch Law*, ed. S. Taekema (Den Haag: Boom Juridische uitgevers, 2004).
[60] Go, "Amsterdam Chamber of Insurance and Average," 523.
[61] Ibid., 515, 516.
[62] Goswin Moll, *De desolate boedelskamer te Amsterdam. Bijdrage tot de kennis van het Oud-Hollandsch failliten-recht* (Amsterdam: De Roever-Kröber-Bakels, 1879), 16-18. The Insolvency Chamber existed until 1811.

other cities.[63] Appeals against sentences passed by these courts are addressed in the chapters which follow, and show the way in which these courts formed part of the legal structure in Holland and Zeeland, culminating in the High Court.

The court records

The records of disputes in the High Court of Holland, Zeeland and West-Friesland have remained largely untouched by historians interested in the nature and activities of the Dutch East and West India Companies, in the Republic and overseas. The companies' own internally-generated records are voluminous, as are the States General's papers relating to the companies. These sources, occasionally supplemented by family archives, have formed the basis of company-focussed colonial histories. The court records analysed in the following chapters are more than merely a new source: they provide a new perspective on conflict management in the Dutch Republic and on the VOC and WIC as legal actors who were summoned to court to defend their very constitution, their corporate governance and their relationship with employees. The main body of sources for this research is the High Court's own records comprising legal documents generated by the third party to which parties turned in the management of their conflicts.

There are at least three reasons to focus on the High Court. Firstly, it was a supra-provincial court. The court's jurisdiction extended over Holland and Zeeland: the disputes which were heard in the court were not limited to one city or to one province. This is significant because all the chambers of the VOC and the WIC were established in cities across Holland and Zeeland. The only exception was the WIC Chamber *Stad en Lande*, located in the province of Groningen. A supra-provincial court thus encompasses the cities where the chambers were located and goes some way in breaking the historiographical hegemony of Amsterdam. Amsterdam was undoubtedly the economic heart of the Republic, and at least the VOC Chamber in that city was relatively more influential than the company structure would indicate.[64] Examining conflicts which arose in that city, as well as in other towns, brings chambers which have been treated as marginal to the fore. In addition, types of issues and litigants can be compared by chamber and by province. This justifies focussing on a supra-provincial court.

The second reason to focus on the High Court is the court's competences. As mentioned earlier, the High Court was not the only supra-provincial court: the Court of Holland (*Hof van Holland*) also had jurisdiction over both Holland and Zeeland. The High Court's competences set it apart from the Court of Holland. The High Court was

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Christiaan van Bochove and Heleen Kole, "Uncovering private credit markets: Amsterdam, 1660-1809," *TSEG/Low Countries Journal of Social and Economic History* 11, no. 3 (2014): 50.

[63] Go, "Amsterdam Chamber of Insurance and Average," 534 n. 115. She clarifies that cases were heard in the Amsterdam Insurance court which had actually originated in other cities, but there were also similar courts established on the Amsterdam model in other cities including Rotterdam and Middelburg. Cases involving Zeeland bankruptcies show that the same is true of the Insolvency chamber – one was established in Middelburg at some point, against which chamber's sentence litigants appealed to the High Court. See Chapter 6.

[64] Gaastra, *The Dutch East India Company*, 21.

established as an appeals court for cases which had been heard in the Court of Holland. Therefore, in the High Court we see cases which had been pursued to their fullest extent, exhausting the legal options available. These cases were the endpoints of formal litigation.

Thirdly, the States General chose to delegate cases to the High Court. Cases involving the VOC and the WIC were delegated by the States General to the High Court. These cases bypassed the city and provincial court structures set out in Figure 1. Delegation was the mechanism by which the States General connected VOC and WIC jurisdictions with the legal system in the Republic, which argument is fleshed out in Chapter 1. It is thus in the records of the High Court that the dynamics between both companies and the States General become clear, and the histories of east and west enter the same framework.

The particular organisation of the High Court archives shapes and constrains the options the historian has in approaching the records. The cases which were dealt with by the High Court have not been preserved in dossiers; rather, the records are kept in chronological series by type of document. There are two options when working with the records – to start with the requests, marking the beginning points of cases in the court; or to start with the sentences, ostensibly the endpoints of the legal proceedings.[65] For reasons of accessibility and feasibility, I have chosen the latter approach. The analyses of cases which follow in the chapters are based on the so-called short sentences as they were resolved and pronounced, and on the extended sentences, when they exist.[66] Only some of the cases which the court sentenced have corresponding extended sentences (*geextendeerde sententies*). The reason for and pattern behind the incomplete series of extended sentences are still unclear. But of the court's records it is the extended sentences which provide the most detail of the parties, their dispute, how the case progressed through the courts, and the parties' claims and counter claims in those instances.

The resolutions which accompany the sentences (*resoluties tot de sententies*) supplement the details which emerge in the sentences. In particular, resolutions drawn up from the late seventeenth century onwards are more detailed than the earlier resolutions. In addition to naming the parties and the court's ruling (but not necessarily the dispute), the later resolutions name the judges involved in adjudicating the case and give an indication of whether or not they agreed with their fellow judge who, as reporter, drafted the sentence. Extensive reasoning behind the judges' rulings is not included in these concise records; High Court judges including Cornelis van Bijnkershoek recorded their legal opinions in *Observationes* and in their own scholarly legal texts.[67] However, the details provided by the resolutions are sufficient for this research.

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[65] The court also passed interlocutory sentences (*interlocutoir vonnis*) which did not include a judgment but required parties to take some action – arbitration, submission of documents to the court, or a decision on admittance of facts or requests. These were not filed separately from the bench's final sentences in which they adjudicated the litigants' claims.

[66] The short sentences as they were resolved (*zoals ze zijn geresolveerd*) and as they were pronounced (*zoals ze zijn gepronuncieert*) constitute two distinct series in the High Court records.

[67] Van Bijnkershoek wrote four volumes entitled *Observationes Tumultuariae*. On the *Observationes* and van Bijnkershoek's other writing, see Boudewijn Sirks, "Bijnkershoek as author and elegant jurist," *Tijdschrift voor Rechtsgeschiedenis/ The Legal History Review* 79 (2011).

A drawback of this approach is that the use of requests to reach out of court settlement is not captured. It is possible that disputing parties threatened a suit in order to put pressure on the other party to settle. Parties likely went so far as to submit a request to the court and received permission to sue, but did not exploit the opportunity. The difference in number of requests submitted to the court and cases sentenced by the court would indicate which disputes were settled. Settlement as a mechanism of conflict management is not, however, the focus of this study. Future research based on the requests could build on the foundation which this study lays.

In addition to the High Court's various sentences and resolutions, I have made use of complementary sources from other institutions. Resolutions taken by the States General illuminate phases and mechanisms of conflict management that were beyond the purview of the court. The cases which are analysed in Chapters 2 and 3 bring this point to bear. A pertinent example is the dispute between Olivier van Noort's Magellan Company and the VOC which was mediated by the States General before it entered the High Court. (Chapter 2). Records generated by the VOC and the WIC themselves have been used to a lesser extent, to sketch the wider patterns of dispute management. In particular, chamber resolutions show the initial phases of claims against the directors, before they entered the legal arena. For instance, in Chapter 4 on wage litigation, claimants first approached chambers to make claims before going to court. These requests are recorded in Chamber directors' resolutions.

Two problematic sources are also used in the following chapters to provide context, namely the Furley collection and Trans-Atlantic Slave Trade Database (TASTD). These two sources provide helpful context for the activities undertaken by WIC servants and illegal traders on the West Coast of Africa and in Atlantic shipping. The Furley collection – Dutch West India Company sources translated from Dutch into English by early twentieth-century Secretary of Native Affairs in colonial Ghana, John Talbot Furley – has received scathing criticism. Albert van Danzig is not only critical of the quality of the translations but also notes the difficulty of tracing the originals from the location details recorded by Furley.[68] While recognising that the TASTD is an incredibly rich and transformative tool, scholars have criticised the database. Julie Svalastog has highlighted the problematic estimates of enslaved people transhipped, while Filipa Ribeiro da Silva and Stacey Sommerdyk have shown that the categorisation of merchants and mariners involved in the trade obscures some of the finer distinctions of roles on board ships, and does not extend to those men who were indirectly involved in the trade, as financiers and investors.[69] These shortcomings of the Furley collection and TASTD do not preclude their use in this research. They are reliable sources for corroborating the presence of ships on the West Coast of Africa, and for providing the details of captains' and ships' involvement

[68] Albert van Dantzig, "The Furley collection: Its value and limitations for the study of Ghana's history," *Paideuma: Mitteilungen zur Kulturkunde* 33 (1987).

[69] Filipa Ribeiro da Silva and Stacey Sommerdyk, "Reexamining the geography and merchants of the West Central African slave trade: Looking behind the numbers," *African Economic History* 38 (2010): 89-98; Julie Svalastog, "The Transatlantic Slave Trade Database: Qualitative possibilities and quantitative limitations" (MA, King's College London, 2012).

in the trade over a longer term than is in view in the court cases. In this way, the two sources are used to provide context rather than as the basis for arguments.

The High Court records of court cases constitute the main source in the chapters which follow. When using such cases, the issue of representativeness must be addressed. Were only exceptional cases pursued to the High Court, in which there were large sums of money at stake? The competence of the High Court as an appeal court means that the cases which have entered the records are those which litigants considered important enough (however they defined the stakes) to warrant the time, expense, and perhaps even publicity, that would have accompanied litigation. This certainly privileges the 'important' cases – but that does mean only infrequent *causes célèbre*. The court was used by individuals and groups of various social ranks, as the chapters which follow demonstrate. This included both locals and foreigners. Not only did the sums of money at stake in the cases which they pursued range from paltry to staggering, but also the profiles of the litigants reinforce the idea that access to the High Court was not the preserve of a wealthy, well-connected, male elite. The High Court of Holland, Zeeland and West-Friesland was, in this way, an accessible, inclusive institution.[70]

There has been no similar, systematic research on cases against other colonial companies which operated in a similar period.[71] Multiple French companies were granted rights to trade, but they did not face court cases of a similar nature to those against the VOC and the WIC.[72] Research on court cases against English companies has been conducted in the context of topics other than conflict management and litigation.[73] This

[70] On inclusive institutions see Acemoglu and Robinson, *Why Nations Fail*.

[71] There is much excellent scholarship on court cases which unfolded in courts established by companies and colonial governments overseas, both for the VOC and the WIC, as well as within other 'national' empires. These cases did not involve companies as litigants; they were cases adjudicated in company courts. See for instance Robert Ross' and Nigel Worden's research on the Cape Council of Justice cases: Robert Ross, *Cape of Torments: Slavery and resistance in South Africa* (London: Routledge & Kegan Paul, 1983); Worden, *Slavery in Dutch South Africa*. On cases in the Colombo Council of Justice see Boudewijn Sirks and Jan Hallebeek, "Uit het archief van de Raad van Justitie te Colombo: Rechtsbedeling in Ceylon in de 18e eeuw," *Fundamina* 16, no. 1 (2010); Kate J. Ekama, "Slavery in Dutch Colombo" (ResMA thesis, Leiden University, 2012). On court cases in Suriname see Karwan Fatah-Black, "Between the plantation and the States General: the revisions court as part of Paramaribo's legal system," in *12th International Conference on Urban History: Cities in Europe, Cities in the World* (Lisbon, Portugal: Unpublished conference paper, 2014). This list of works is far from exhaustive.

[72] Thanks to Elisabeth Heijmans for pointing this out. Personal Communication, May 2018. On jurisdictional disputes between parties overseas and how they played out in France see Helen Dewar's work: Helen Dewar, "Government by trading company?: The corporate legal status of the Company of New France and colonial governance," *Nuevo mundo mundos nuevos* (2018); Helen Dewar, "Litigating Empire: The role of French courts in establishing colonial sovereignties," in *Legal Pluralism and Empires, 1500-1850*, ed. Richard J. Ross and Lauren Benton (New York: New York University Press, 2013).

[73] In her doctoral research, Julie Svalastog unravels the intricacies of internal strife over financial woes of the Guinea Company which disputes were heard in court in early seventeenth-century England. Julie Svalastog, "Mastering the Worst of Trades: England's early Africa companies and their traders, 1618-1672" (Unpublished PhD, Universiteit Leiden, forthcoming 2018), esp. ch 1 and 2. Philip Stern addresses the famous Sandys case of the early 1680s in which Thomas Sandys sued the EIC, arguing that its monopoly was illegal. Philip J. Stern, *The Company State: Corporate sovereignty and the Early Modern foundations of the British Empire in India* (Oxford: Oxford University Press, 2011), 46-60. William Pettigrew addresses court cases between the Royal African Company and interlopers which were dealt with in England during the political upheaval later that decade. In particular he mentions the case which slave trading interloper Jeffrey Nightingale brought against the company in the Court of the King's Bench. That case, from 1689, just one year after the Glorious Revolution, was one of a

study of conflict management in the Dutch Republic as it pertained to the VOC and the WIC is an innovative study both as far as historiography of the Dutch companies is concerned, as well as scholarship on other European trade and colonisation companies in the Indian and Atlantic Oceans.

Beyond East and West

One of the striking features of the histories of the Dutch East and West India Companies is the stark divide between the two geographical areas and the activities of these Dutch companies. The companies' histories have largely been treated separately. In the last few decades, the WIC has emerged from the VOC's historiographical shadow. Dutch Atlantic history has gained momentum in the Netherlands and United States. Some of this new research on the Dutch in the Atlantic is helping to get beyond the simplistic success/failure conclusion of comparative studies and instead has gone a long way in embedding the WIC Atlantic colonies in local, regional and Atlantic-wide networks.[74] The rise of Atlantic, transnational and global history in the recent past has seen a vigorous increase in research on connections, links, webs, and circuits along which people, goods and ideas were transported. Traditionally studied within the frame of a nation, empires are now recognised to have been interdependent, and embedded in connections on multiple levels.[75]

The effect of the rise of Atlantic History is to right the historiographical imbalance, which for a long time resulted in more scholarly attention on the VOC than the WIC. With

number in which interlopers argued that the company's seizure of their goods was illegal because it was based on royal prerogative as opposed to statute. Of the Nightingale case in particular, Pettigrew states that "Chief Justice John Holt turned this case into a trial of the legal powers of the African Company's vice-admiralty courts and the legality of their forfeiture power." William A. Pettigrew, *Freedom's Debt: The Royal African Company and the politics of the Atlantic slave trade, 1672-1752* (Chapel Hill: University of North Carolina Press, 2014), 31, 32. Quote 31.

[74] See for instance Gert Oostindie and Jessica Vance Roitman, "Repositioning the Dutch in the Atlantic, 1680-1800," *Itinerario* 36, no. 2 (2012); Gert Oostindie and Jessica V. Roitman, eds., *Dutch Atlantic Connections, 1680-1800: Linking empires, bridging borders* (Leiden and Boston: Brill, 2014); Karwan Fatah-Black, *White Lies and Black Markets: Evading metropolitan authority in Colonial Suriname, 1650-1800* (Leiden: Brill, 2015); Wim Klooster, *The Dutch Moment: War, trade and settlement in the seventeenth-century Altantic World* (Ithaca: Cornell University Press, 2016); Bram M. Hoonhout, "The West Indian Web: Improvising colonial survival in Essequibo and Demerara, 1750-1800" (PhD, European University Institute, 2017).

[75] Cátia Antunes and Filipa Ribeiro da Silva, "Cross-cultural Entrepreneurship in the Atlantic: Africans, Dutch and Sephardic Jews in Western Africa, 1580-1674," *Itinerario* 35, no. 1 (2011). Wim Klooster, "Inter-imperial smuggling in the Americas, 1600-1800," in *Soundings in Atlantic History: Latent structures and intellectual currents, 1500-1830*, ed. Bernard Bailyn and Patricia L. Denault (Cambridge, MA: Harvard University Press, 2009). Claudia Schnurmann, "Representative Atlantic entrepreneur: Jacob Leisler, 1640-1691," in *Riches from Atlantic Commerce: Dutch Transatlantic trade and shipping, 1585-1817*, ed. Victor Enthoven and Johannes Postma (Leiden: Brill, 2003). For studies of empire beyond the Atlantic see Alison Games, *The Web of Empire: English Cosmopolitans in the Age of Expansion, 1560-1660* (New York: Oxford University Press, 2008); Ward, *Networks of Empire*.

this has come efforts to draw east and west into the same analytical frame.[76] I will follow this approach, in line with recent developments in the historiography.

The High Court of Holland and Zeeland was an arena in which both companies were active, providing a wide-angle view of the engagement between the companies, their opponents, and the States General. Comparing this engagement brings new insights on a range of topics, as the chapters to follow will bear out. But comparative approaches to VOC and WIC history are not without their critics. Victor Enthoven, for one, has declared comparing the VOC and the WIC to be useless, because the Indian and Atlantic Oceans are too different to warrant a comparison of the activities of the companies which operated there.[77] He is correct that the companies and the charter areas in which they operated were significantly different. However, at the creation of the VOC and the WIC in 1602 and 1621 respectively, there were many similarities between the companies and scholars have debated to what extent the WIC charter was modelled on the VOC's founding charter.[78] Over the course of the seventeenth and eighteenth centuries the companies' differences became more and more pronounced in their form, operations, and structure overseas, as over time the WIC contracted out and lost its monopolies.[79] That the companies were different does not negate the benefits of drawing the two companies into the same analysis with careful consideration of their differences. The reason for this is to consider questions of empire – not empires, one in the Atlantic and one in the Indian Ocean, but a single Dutch empire in the early modern period.[80] The Indian and Atlantic Ocean spheres of the early modern Dutch empire come into the same view in the High Court in The Hague. To understand how the different parts interacted, it is necessary to examine the legal structures of the Dutch empire.

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[76] A recent example of this trend is Jos Gommans and Cátia Antunes, eds., *Exploring the Dutch Empire: Agents, networks and institutions, 1600-2000* (London: Bloomsbury, 2015). See also Emmer and Gommans, *Rijk aan de rand van de wereld*.

[77] Victor Enthoven, "An assessment of Dutch Transatlantic commerce, 1585-1817," in *Riches from Atlantic Commerce: Dutch Transatlantic trade and shipping, 1585-1817*, ed. Victor Enthoven and Johannes Postma (Leiden: Brill, 2003), 386-387.

[78] Alexander Bick, "Governing the Free Sea: The Dutch West India Company and commercial politics, 1618-1645" (Unpublished PhD, Princeton University, 2012), 99-100. Here Bick comments on the points of similarity and difference between the VOC and WIC founding charters. See also Henk den Heijer, *De geoctrooieerde compagnie. De VOC en de WIC als voorlopers van de naamloze vennootschap*, Ars Notariatus 128 (Deventer: Kluwer, 2005), esp. 3.3.

[79] Victor Enthoven and Johannes Postma, "Introduction," in *Riches from Atlantic Commerce: Dutch Transatlantic trade and shipping, 1585-1817*, ed. Victor Enthoven and Johannes Postma (Leiden: Brill, 2003), 2.

[80] Famously, Piet Emmer and Wim Klooster argued that there was no Dutch Atlantic empire, see Pieter C. Emmer and Wim Klooster, "The Dutch Atlantic, 1600-1800 Expansion without empire," *Itinerario* 23, no. 2 (1999). Klooster has since changed his mind, see Klooster, *The Dutch Moment*. In the Indian Ocean, Dutch colonial history tends to be limited to Indonesia after 1800, when it became a colony of the Dutch state. Remco Raben addresses this in Remco Raben, "A New Dutch Imperial History? Perambulations in a prospective field," *Low Countries Historical Review* 128, no. 1 (2013). Studies which theorise and conceptualise a Dutch empire which spans the Atlantic and Indian Oceans are still lacking. Bridging east and west is one of the goals of the NWO project as a whole of which my research forms one part. Challenging Monopolies, Building Global Empires in the Early Modern Period. See http://www.hum.leiden.edu/history/research/projects-mgi/challenging-monopolies.html for further details of the project.

Company law and company courts

The foundational monopoly charters of 1602 and 1621 did not only grant the companies monopolies on trade and routes, but also invested the two companies with the rights to establish their own legal systems. For the VOC this was imparted on the company in the often-quoted Article 35; for the WIC it was phrased in the exact same terms and set out in Article 2.[81] Both companies could thus exercise delegated sovereignty. But the extent to which they did so differed between the companies, and within each charter area.

In the VOC charter area, shipboard justice based on the letters of articles (*artikelbrieven*) gave way to a hierarchy of company courts as the company made territorial gains.[82] In 1619, the VOC conquered Jayakarta and established the company's Indian Ocean headquarters there, named Batavia. The following year, Governor General Coen separated the company government and judicial structures in Batavia. What emerged in Batavia over time was a system of company courts, atop which sat the Council of Justice. That court functioned as the appellate court in Batavia as well as for all courts in the VOC legal framework in the charter area.[83] As permitted by the charter and instructions, the VOC appointed legal personnel to adjudicate matters in these company courts.[84] In Batavia, for reasons of pragmatism, the company was happy for a plural legal order to exist. While all company servants, European free burghers and foreign Europeans, people of mixed European and Asian parentage and Eurasian children recognised by their European fathers were subject to company law, jurisdiction over the large Chinese population, indigenous Javanese, and other Asian ethnic groups was less clear.[85] According to Raben, the VOC "was neither able nor willing to impose its legal system on the Asian population and left complicated issues such as civil jurisdiction to indigenous political leaders."[86] The position of company law and company courts was not uniform across the company's charter area because the company by no means exercised

[81] VOC: Menno Witteveen, *Een onderneming van landsbelang: De oprichting van de Verenigde Oost-Indische Compagnie in 1602* (Amsterdam: Amsterdam University Press, 2002), 94-95. WIC: J. De Laet, *Historie ofte iaerlijck verhael van de verrichtinghen der geoctroyeerde West-Indische Compagnie, zedert haer begin, tot het eynde van 't jaer sesthien-hondert ses-en-dertich; begrepen in derthien boecken, ende met verscheyden koperen platen verciert.* (Leyden: Elsevier, 1644), 8-9.

[82] The letter of articles (*artikelbrief*) was the basis of shipboard justice. H. Hoogenberk, *De rechtsvoorschriften voor de vaart op Oost-Indië. 1595-1620* (Utrecht: Kemink en Zoon). Kerry Ward discusses the VOC legal framework in the early seventeenth-century in Ward, *Networks of Empire*, 66-77. Nigel Worden and Gerald Groenewald present a helpful summary of the Cape's legal structure in the introduction to the source publication: Nigel Worden and Gerald Groenewald, eds., *Trials of Slavery: Selected documents concerning slaves from the criminal records of the Council of Justice at the Cape of Good Hope, 1705-1794* (Cape Town: Van Riebeeck Society, 2005), xix-xxvii.

[83] Jacobus la Bree, *De rechterlijke organisatie en rechtsbedeling te Batavia in de XVIIe eeuw* (Rotterdam: Nijgh & van Ditmar, 1951), 25-26, 54-55; Ward, *Networks of Empire*, 68-70.

[84] Article 35 in Witteveen, *Een onderneming*, 94-95. La Bree notes that 'love of justice' was specified as a qualification in 1650 for the men appointed as commissioners but that over time the number of academicly trained legal scholars increased so that by 1656 the majority eld doctorates. He adds that contemporary commentators despaired that academic training was no guarantee of knowledge. Bree, *De rechterljke organisatie*, 56.

[85] Ward, *Networks of Empire*, 71-73.

[86] Remco Raben, "Batavia and Colombo: The ethnic and spatial order of two colonial cities, 1600-1800" (PhD, Leiden University, 1996).

the same degree of sovereignty in those places. Direct sovereignty of conquered territories was one end of what Kerry Ward identifies as a continuum; the opposite side of the spectrum was those places where indigenous polities permitted a company warehouse on their terms.[87]

Similarly, the WIC charter area comprised a patchwork of different legal spaces. The short-lived colony in Brazil was taken by conquest from the Portuguese, as was the fort in Elmina. The Caribbean islands Curaçao, Aruba and Bonaire were also conquests. These territories were under direct company control. In contrast, the company permitted private colonisation efforts within its charter area in patroonships. For instance, the Zeelander Abraham van Pere established a private colony along the Berbice river (in current-day Guyana). Moreover, there were also colonies which were run by a private society (*societeit*), for instance Suriname from 1682, where the WIC, the city of Amsterdam and the family van Aerssen van Sommelsdijk jointly administered the colony.[88]

It was also on the grounds of the charters that both the VOC and the WIC had the power to publish ordinances, write law and enforce it. This was done on a local level in response to the peculiarities of local settings in the context of the law of Holland not dealing with all the matters with which company governments were faced. In the VOC area, the Statutes of Batavia, compiled in 1642, formed the basis of company rule across the Indian Ocean. These were then augmented at a local level in response to specific circumstances.[89] In the West India Company charter area, ordinances responsive to local peculiarities were drawn up to govern these areas too.[90]

The VOC and the WIC established the rule of law in their colonies in the name of the States General. Ordinances issued at local level and sentences passed by the companies' Councils of Justice were explicit in their reference to the government of the Dutch Republic as the highest authority. Sentences passed by the VOC's Cape Council of Justice were passed "in the name and on behalf of the high and mighty Lords States General of the free United Netherlands."[91] The VOC derived its sovereignty by grant from the States General, and remained subordinate to the States General in the exercise of that

[87] Ward, *Networks of Empire*, 74-75.

[88] Han Jordaan and Marijcke Schillings, "Organisatie van bestuur en rechtspraak in de Nederlandse Caraïbische wereld," (2006), 1, 2, 4, 6-9. On Dutch Brazil see Cátia Antunes, Erik Odegard, and Joris van den Tol, "The networks of Dutch Brazil: Rise, entanglement and fall of a colonial dream," in *Exploring the Dutch Empire: Agents, networks and institutions, 1600-2000*, ed. Cátia Antunes and Jos Gommans (London etc: Bloomsbury), 82-86. On the institutional set-up in Elmina see Henk den Heijer, "Institutional interaction on the Gold Coast: African and Dutch institutional cooperation in Elmina, 1600-1800," ibid. (London: 2015), 213-218. On Suriname, see Fatah-Black, *White Lies and Black Markets*, Ch. 2. See also Jacob A. Schiltkamp, "On Common Ground: Legislation, Government, Jurisprudence, and Law in the Dutch West Indian Colonies: the Order of Government of 1629," *De Halve Maen* 70, no. 4 (1997).

[89] Ward, *Networks of Empire*, 68-74. The text of the ordinances themselves demonstrate their reactive and very local qualities. Ordinances from VOC Colombo have been published in the volumes by Hovy. See Lodewijk Hovy, *Ceylonees Plakkaatboek: Plakkaten en andere wetten uitgevaardigd door het Nederlandse bestuur op Ceylon, 1638-1796.*, 2 vols. (Hilversum Verloren, 1991).

[90] Jacob A. Schiltkamp, Jacobus T. de Smidt, and To van der Lee, eds., *West Indisch Plakaatboek*, 3 vols. (Amsterdam: Emmering, 1973-9).

[91] Translation in Worden and Groenewald, *Trials of Slavery*, 15 [1707 Jan de Thuilot].

sovereignty. J. A. Somers noted that scholars have recognised that the VOC was granted "'state' authority"; however, as he helpfully reminds readers, the charter "was only a national, public law document, without international collateral effect or effect in international law."[92] But this did not prevent the VOC from at the very least acting like a state at the Cape and in parts of Asia.

The debate around the form that the VOC took in Asia regarding its operation as a state has been going for a while. Kerry Ward has argued that the VOC empire was constituted by multiple and intersecting networks, through which the company developed and exercised sovereignty. She argues that those networks "amalgamated spatially and over time into an imperial web whose sovereignty was effectively created and maintained but always partial and contingent."[93] Gerrit Knaap takes this a step further by recognising that sovereignty – whether partial and contingent or otherwise – was one of three forms which the VOC state took in Asia. He argues that in its power relations with Asian rulers, the VOC state in Asia took the forms of extraterritoriality, suzerainty and sovereignty. War, he points out, was central to the creation and maintenance of these different relationships. Violence was, Knaap says, part of the 'core-business' of the company until the late seventeenth century.[94] Henk den Heijer conceives of the company somewhat differently. According to him, the VOC – and the WIC – were extensions of the Dutch state. He writes:

> Both companies could exercise important sovereign rights in the name of the States General in their charter areas..... In many aspects, government tasks and those of the companies were difficult, if not impossible to separate. In particular in the matter of government, issuing regulations, and administering justice overseas the trading companies functioned as extensions of the state.[95]

A third contribution to this debate comes in the form of the application of Philip Stern's company state idea to the VOC. Stern argues that the English East India Company (EIC) was "a form of government, state, and sovereign in Asia" before it became a territorial power after the Battle of Plassey (1757). His approach is to consider the EIC as a form of early modern government, not as a commercial enterprise with state-like attributes.[96]

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[92] Original: "*'statelijke' volmachten*"; "*het octrooi slechts een nationaal, publiekrechtelijk document was, zonder internationale derdenwerking of doorwerking in het volkenrecht."* J. A. Somers, *De VOC als volkenrechtelijke actor* (Hilversum: Verloren, 2003), 16. Kerry Ward, Julia Adams and Carla van Wamelen's work also deals with the issues regarding the VOC as a state, or state-like actor.

[93] Ward, *Networks of Empire*, 6. Lauren Benton's work has been particularly influential on the topic of establishing imperial sovereignty. Lauren Benton, *A Search for Sovereignty: Law and geography in European Empires, 1400-1900* (New York: Cambridge University Press, 2010); Lauren Benton, *Law and Colonial Cultures: Legal regimes in world history, 1400-1900* (New York: Cambridge University Press, 2002).

[94] Knaap, "De 'core business' van de VOC," 13-20.

[95] Original: "*Beide compagnieën mochten in hun octrooigebieden in naam van de Staten-generaal belangrijke soevereine rechten uitoefenen.. Op veel terreinen ware overheidstaken en die van de compagnieën moeilijk, zo niet onmogelijk van elkaar te scheiden. Met name op het terrein van bestuur, regelgeving en rechtspraak overzee fungeerden de handelscompagnieën als verlengstukken van de staat."* Heijer, *De geoctrooieerde compagnie*, 216.

[96] Stern, *The Company State*, 3, 6.

Arthur Weststeijn follows Stern's recent argument, and claims that the VOC should "be considered a particular political institution in its own terms, one that challenged its critics to think about it as a body politic that was neither corporation nor empire, but rather a company-state."[97]

Part of evaluating how the VOC state operated in its charter area is understanding the legal system which the company created and sustained overseas. But that is not enough – how the companies engaged with the Dutch state and its institutions needs to be part of this analysis. The conflicts brought to the High Court touch on issues of company sovereignty, jurisdiction and reach, both overseas and in the Republic.

There has been no equivalent debate around the position of the WIC in the Atlantic. In contrast to the VOC, scholars have argued that the WIC did not operate as a sovereign within its charter area. Wim Klooster states:

> The West India Company might have been in charge of Dutch America, but its position was not that of a sovereign. That is to say, it remained accountable to the States General, which interfered more in Atlantic matters than it did in the affairs of the VOC.[98]

According to Klooster, the company's subordination to the States General is evidenced by the fact that the verdicts passed by company courts in Suriname could be reviewed by juridical institutions in the Republic. Han Jordaan and Marijcke Schillings make the same point, that colonial cases could be reviewed by the States General. They state that "[the States General] delegated part of its sovereignty to the WIC, but maintained ultimate sovereignty over the areas taken into possession."[99] The exercise and limits of the companies' sovereignty were issues which swirled beneath the surface in the High Court cases in which the companies were litigants. Discussions around the companies as legal and political corporations in their charter areas needs to be connected to how the companies acted as legal and political corporations in the Republic. The company-court-States General dynamic is a crucial part of adding another layer to what constituted the companies.

Suing the Companies

Neither the VOC nor the WIC managed to deal with the overseas expansion-related disputes entirely outside of the legal arena in the Republic. At first, this seems to be a somewhat banal observation. Yet the potential for conflict in the Republic was already

[97] Arthur Weststeijn, "The VOC as Company-State: Debating seventeenth-century Dutch colonial expansion," *Itinerario* 38, no. 1 (2014): 15.

[98] Wim Klooster, "Other Netherlands beyond the sea: Dutch America between metropolitan control and divergence, 1600-1795," in *Negotiated Empires: Centers and peripheries in the Americas, 1500-1820*, ed. Christine Daniels and Michael V. Kennedy (London: Routledge, 2002), 173.

[99] Original: "*delegeerde een deel van zijn soevereiniteit aan de WIC, maar behield de uiteindelijke oppersoevereinitieit over de in bezit genomen gebieden*." Jordaan and Schillings, "Organisatie van bestuur en rechtspraak," 1.

acknowledged in the companies' founding charters. Article 42 of the 1602 VOC charter, which limited the liability of the directors, also paved the way for those directors to be sued. These two issues were of course linked – if claims against the directors arose, the directors' personal assets would not be vulnerable to seizure. Importantly, the charter article added that the directors could be summoned to court.[100] The 1621 WIC charter replicated this article, almost to the letter. Article 36 of the WIC's founding charter indicated that the directors of that company could be summoned to court.[101] These charter articles point to an early awareness of potential expansion-related conflicts.

The fact that the companies used the courts in the Republic, and the High Court in The Hague in particular, to manage various conflicts has two profound implications. Firstly, both the VOC and the WIC were subject to the law in the Republic, as pronounced by the judges of the courts at municipal, provincial and supra-provincial level. Both companies had to comply with the verdicts which the bench of the High Court pronounced, and when they did not, faced court orders compelling them to do so.[102] This indicates that while there may be debate over whether or not the VOC acted like, or was a sovereign in its charter area, there is no doubt that the VOC in the Republic was subordinate to the States General and the legal system. Neither the VOC nor the WIC was above the law.

Like the companies themselves, the judicial system of Holland and Zeeland to which the companies submitted was not free of political influence. High Court records attest to the interference of the States General. The States General issued civil requests which litigants handed over to the court as a show of political backing for their claims. These were not always accepted by the judges of the High Court but were likely used by litigants in attempts to shore up their claims.[103] Moreover, the records point to the crucial role which the States General played as connector of otherwise insulated jurisdictions (Chapter 1). The States General was involved in the legal arena in these ways.

The second important implication of the companies' appearance in the High Court records is how litigants perceived the companies. Men and women did not perceive the companies as unstoppable and untouchable giants in society; individuals could pursue their interests against the companies. The companies instigated legal proceedings against parties but also submitted to the summonses issued by claimants. That is, both companies were vulnerable to litigation in the Dutch Republic. The litigants who populate the High Court records are diverse – from the wealthiest of the Amsterdam merchant elite to those who at the time had little or no social standing.[104] The cases which the companies initiated

[100] Article 42 in Witteveen, *Een onderneming*, 96.

[101] Article 36 in Laet, *Iaerlijck Verhael*, 19.

[102] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *660* (1690), Korte sententie...geresolveerd, scan 29; inv. nr. *905* (1690), Resoluties, scan 19. The case was between Maria van Halewijn and the First WIC Chamber Amsterdam. The court determined that the sentence had not been fulfilled.

[103] *Requeste civile* is defined in LeBailly and Verhas, *Hoge Raad*, 93. For use in a case, see for instance, Chapter 4, the case involving Neeltje Claes, and the Bartolotti case discussed in Chapter 5. The Bartolotti case records refer to the High Government (*hooge Overicheijt*) as the issuer of the requests, understood as a reference to the States General.

[104] The High Court also conducted *pro deo* cases. In the case involving Neeltje Claes (Chapter 4) the sentence specifically notes her poverty. See also the requests on which *pro deo* was requested and/or granted, for

and those which were brought against them were a combination of *causes célèbre* and mundane commercial conflicts. This would not have been the case had the companies been perceived as untouchable or above the law.

Company conflicts

Detailed analyses of the High Court cases are central to the six chapters which follow. The first chapter presents an overview of the companies in court. First, I sketch the relationship between company courts and the courts in Holland and Zeeland. The central question is how did the companies' legal structures intersect with the courts in the Republic? I will show that the companies' legal structures differed significantly in the way their relationship with the courts in Holland and Zeeland was envisioned. While the VOC's legal system was set up as an insulated system with no line of appeal to the Republic, the WIC's was not. The States General played the role of connector of judicial systems. I then turn to analysing the litigants involved in High Court cases against the companies, showing the diversity of parties who opposed the VOC and the WIC. Finally, I turn to categorising the cases which were heard in the court. The companies faced similar types of conflicts in the High Court but there are noticeable differences too, not least in the numbers of cases.

Each of the subsequent five chapters addresses the company-court-States General dynamic by taking up one of the categories of cases identified in Chapter 1. The aim of each chapter is twofold. On the one hand, I trace how and why a particular kind of dispute was heard in the High Court in order to better understand company conflict management in the Republic. On the other hand, the substance of the cases provides insight into each specific category of cases. The division of chapters below introduces and pre-empts the categorisation of cases which is presented in Chapter 1.

Chapter 2 addresses cases relating to competitors entering the VOC and WIC charter areas. It deals with cases against each company which related to the permeability and protection of the exclusivity of their charter areas. It argues that the VOC defended its monopolies against competitors in the years after its creation, to the point where such cases did not arise again after the 1640s. The VOC's competitors had tried to maintain privileges granted to them, or to acquire privileges, on the basis of charters granted by the States General. In contrast, the WIC's monopolies were whittled away over time as the company leased out and lost its monopolies to private merchants, both within and outside of the company. The WIC monopolies were permeable via legal means, namely contracts. The WIC allowed competitors into its charter area by drawing up contracts for private trade. In the two cases examined in the chapter, there were disputes with the contract holders regarding their activities in the charter area. Grouping together the cases

instance NL-HaNA, Hoge Raad Holland and Zeeland, 3.03.02, inv. nr. *145* (1749), Rekesten, unpaginated [1749-07-01]; inv. nr. *146* (1750), Rekesten, unpaginated [1750-06-13]; inv. nr. *158* (1775), Rekesten, unpaginated [1775-03-30].

concerning entrance into the companies' charter areas shows that while the VOC tried to keep competitors out, the WIC let them in on the basis of contracts.

Chapter 3 continues on the theme of exclusivity and monopoly from the point of view of private trade conducted by company employees. Both the VOC and the WIC allowed, and tolerated, private trade by company employees; permitted private trade was distinguished in regulations from illegal private trade. Offshoots of criminal private trade cases which were heard in VOC courts arose in the Republic when company servants escaped the jurisdiction of Batavia. The VOC tried to have the accused extradited to Batavia, sparking conflicts between the legal institutions in the Republic. Extradition was a distinctly VOC problem. A distinctly WIC problem was voyages equipped for the purpose of breaking the company monopolies in the Atlantic, where the threshold for such voyages was lower than in the Indian Ocean. The VOC and WIC cases together contribute to scholarship on illegal private trade and smuggling by analysing the mechanisms of smuggling revealed in the cases and highlighting the actors who were involved in a case-study based approach.

Chapter 4 delves more deeply into the relationship between the two companies and their employees, specifically those taken into company employ in the Republic. The focus in this chapter is on wage disputes based on claims to employees' wages. The chapter shows that the transferability of wage accounts resulted in a wide pool of claimants against the companies. Litigants encompassed not only employees, but also their kin, heirs, creditors and holders of accounts bought on the secondary market. That a secondary market for wages existed in the Republic is not a novel argument, but notarial deeds and High Court proceedings indicate that there were secondary markets for wages in the colonies too. The wages at stake in these cases were most often those earned by sailors and soldiers, those on the lowest rungs of the company employment ladder. These cases highlight the point that the High Court was accessible for ordinary people who made claims to rather small sums of money. The VOC Chamber Amsterdam directors also disputed remuneration with the city auctioneers who assisted at the chamber sales. The case sheds light on how the dispute was managed over a period of a century, after which the changing organisation of company trade reignited the conflict and it was taken to court. Together, the cases demonstrate that salary disputes were not dealt with in-house, but adjudicated by the High Court in proceedings brought by a range of litigants, individually and collectively.

In Chapter 5 the focus shifts from company employ to company shareholding. The cases analysed in this chapter, all of which relate to shareholding in the VOC chambers, show that disputes arose out of specific elements of share ownership. Firstly, the VOC chambers seized shares from defaulting purchasers of company goods, which action the chambers justified on the grounds of their regulations. Heirs disputed this in court. Secondly, a case with bearing on the liability of chamber directors arose when a bookkeeper mistakenly transferred shares from the wrong account into a new owner's name. The original owner of the shares, the new owner, and the chamber directors were all involved in suits against each other, in varying constellations of parties. And thirdly, executors of an estate proceeded against the company with claims to have freedom to sell

shares in the estate. The dispute was about the role of the chamber directors to oversee the executors' decisions. Perhaps heightening the tension was the fact that the shares comprised part of the estate of a member of the well-known De Pinto family, who were well-connected, wealthy members of the Portuguese Nation in Amsterdam. Some of these elements are picked up in the detailed analysis of the case between the Bartolotti family members and the VOC over shares in the Hoorn Chamber. The case brings to the fore numerous issues relating to investing in the VOC and presents the opportunity to piece together a portrait of a shareholding family's diverse trade interests and foreign connections. To date, research on company shareholding has focussed on corporate governance, on the origins of investors and magnitude of investments, and on disputes among shareholders. This chapter contributes a new element to this research by focussing on disputes between the directors and shareholders.

Chapter 6 focusses on the issue of property rights. The role of the state in securing property rights, and when this occurred has been the topic of much debate. Commercial disputes over property rights arose around buying, selling and seizing colonial imports. These cases bring insight into property rights-related issues: based on the cases, I will argue that the High Court played a role in securing property rights from the early seventeenth century. After setting out the ways in which the companies sold goods, and to whom, the focus turns to the disputes. The first concerns access to the market for private merchants who bought up VOC spices. The case between the merchants and the chamber provides insight into how sale from a chamber took place, and the company's concerns over private merchants capturing the profit from resale that would otherwise fill the chambers' treasuries. The sale and delivery of spices from the Delft chamber to the Amsterdam merchants did not proceed as it should have, and so the parties proceeded to court. The second set of cases relates to the maintenance of property rights seen from the perspective of bankruptcy cases. Bankruptcy, debt and liability were interwoven issues. Based on the cases, we can see that the VOC was not treated as a preferential creditor of insolvent estates. Finally, property rights are considered via cases regarding sale and seizure of goods. Three cases involving private merchants, resident in the Republic and foreigners, show the WIC's engagement with shipowners, freighters and buyers of goods in the context of maritime law, subjection and good faith. The High Court sentences passed in these cases secured property rights against the predatory tendencies of the companies.

To conclude I return to the concept of conflict management and the implications of the cases involving the companies which were heard in the High Court. In particular, the High Court as an arena of expansion-related conflicts adds another layer to discussions of the working of the VOC as a company state. By bringing the focus to the disputes in *patria*, I have shown the importance of the States General in conflict management. The relationship between companies, courts, and States General was certainly not always a straightforward one, as the chapters will show. Furthermore, this analysis of company conflict management in the Republic brings new depth to understanding the contours of the early modern Dutch empire.

1. The Companies in Court

The legal framework, litigants and categorisation of conflicts

Court cases regarding colonial expansion were pursued in the High Court in The Hague. The cases were part of managing conflicts which arose in the Republic as well as conflicts which were rooted in events in the companies' charter areas. This chapter presents a three-part overview of the companies in court. Firstly, in order to establish the judicial framework in which these cases unfolded, this chapter sets out the relationship between the High Court in The Hague and the companies' courts established in their respective charter areas. The States General played an important role in connecting jurisdictions. The second part of this chapter focusses on the actors who appeared as litigants in the High Court. Who were the parties named in sentences against the VOC and the WIC? Thirdly, I turn to the content of the cases and present an overview of all the cases involving the VOC and the WIC in the form of a categorisation. The categorisation establishes the thematic division of the chapters which follow. This chapter provides the groundwork for the detailed analysis of cases to come.

The legal framework

From company court to High Court: the VOC

On the grounds of the sovereignty delegated to them by the States General in their charters, the VOC and the WIC constructed legal systems in their respective charter areas. Within those legal systems, the company was judge. The VOC's legal system did not intersect with the court system in the Republic; the company's judicial system can be thought of as insulated.

The Council of Justice in Batavia was the highest and appellate court in the VOC charter area. Established in 1620, and named the Council of Justice from 1626, the court functioned as an appeals court for cases from subsidiary courts in Batavia, such as the Aldermen (*schepenbank*), as well as for sentences passed in Councils of Justice throughout the VOC's charter area.[1] According to Nigel Worden and Gerald Groenewald, while theoretically Cape Council of Justice sentences could be appealed in Batavia, in practice it was too expensive.[2] The right to appeal to the Council of Justice in Batavia was based on the fact that all company colonies and factories fell under the legal administration of Batavia. The Council of Justice in Batavia ruled in final instance. Cases sentenced in

[1] Bree, *De rechterljke organisatie*, 25-26, 54-84. See also D. J. Kortlang, "Raad van Justitie: Inventaris van het Hooggerechtshof van Nederlands-Indië (Hoge Raad van Justitie) 1620 - 1809," Arsip Nasional Republik Indonesia.[webpage]

[2] Interestingly, one of the grievances which were put forward by the Patriots in the 1770s and 1780s was their desire to appeal in Holland rather than in Batavia. But this was not granted to them. Worden and Groenewald, *Trials of Slavery*, xx, xx n.10.

Batavia could not be appealed in the Republic.[3] The company's jurisdiction did not overlap or intersect with jurisdictions in the Republic. As Kerry Ward stated, "[t]he legal network of the Dutch East India Company empire, while based in the laws of the United Provinces, operated separately from the exercise of law in the Netherlands."[4]

Yet, there are cases in the High Court records which were rooted in disputes in the VOC's charter areas. These cases entered the legal system in Holland and Zeeland, and were heard by the High Court in particular, for one of two reasons. The first route to the High Court was via lodging a complaint with the States General, which I have called redress. The same charter article which granted the VOC the right to appoint officials, and dismiss them, also granted those high company officials the right to complain to the States General in the event that they were fired.[5] This was not a formal appeal against a sentence in a higher court; in the way it was set out in the VOC's charter, it was an opportunity for a high-ranking official to make his grievances known to the highest political authority in the Republic, the States General.[6]

The second route into the legal system of Holland and Zeeland was more conniving. Individuals escaped the jurisdiction of Batavia and made their way to the Republic. There, litigants claimed recourse to the courts in the Republic as their competent judges.[7] For their part, VOC directors tried to shore up the jurisdiction of the court in Batavia. Proceedings in the city, provincial and High Court in these cases reveal a legal strategy employed by the VOC which amounted to extradition. The company sought permission to have litigants sent back to Batavia to face ongoing legal proceedings there or to face execution of sentences which had been passed in their absence. Extradition cases sparked conflicts between judicial and political institutions in the Republic over which body was competent to decide whether or not someone should be forcibly transported to Batavia. These cases make clear the duality of the VOC, as judge in its charter area and subject to the judgments of the court in the Republic.

A Scot in The Hague

William Carmichael, a Scot, was one of a number of foreigners who took up the opportunity to pursue litigation in the courts in The Hague.[8] But beyond highlighting the

[3] Bree, *De rechterljke organisatie*, 82; Ward, *Networks of Empire*, 17.
[4] Ward, *Networks of Empire*, 15.
[5] Article 35 published in Witteveen, *Een onderneming*, 94-95.
[6] Original: "*doleantien, ofte clachten... aen ons te doen*." Ibid., 95. Matthijs de Jongh put this right to complain to the States General in the context of the large degree of influence which the States General exerted on the functioning of the company in the Republic. Johan Matthijs de Jongh, "Tussen *societas* en *universitas.* De beursvennootschap en haar aandeelhouders in historisch perspectief" (PhD, Erasmus Universiteit Rotterdam, 2014), 65.
[7] This was the strategy pursued by litigants in the case between husband and wife Joan Bitter and Cornelia van Nijenroode and in the dispute between the Canter family and the VOC. See respectively Leonard Blussé, *Bitters Bruid. Een koloniaal huwelijksdrama in de Gouden Eeuw* (Amsterdam: Balans, 1997); Roelof van Gelder, "De kas van de compagnie. Liefde, geld en recht in de achttiende eeuw," *Mededelingen van de Stichting Jacob Campo Weyerman* 38, no. 1 (2015).
[8] Other examples include Isaac Minet of Dover (vs. WIC, 1735); Samuel and Metgen Elders resident in Hamburg (vs. VOC, 1686), Martin Barts of Gluckstad (vs. WIC, 1660) and Thomas Laleij English merchant in Middelburg (vs. VOC, 1621).

access to the court enjoyed by foreigners, the case Carmichael brought against the VOC illuminates the relationship between the political and juridical institutions in the Republic as they dealt with conflicts arising from colonial expansion in Asia. The early seventeenth-century case between Carmichael and the VOC was fraught with issues of war, diplomacy and inter-imperial struggle. Litigation was one element of the conflict management strategies used by Carmichael and the VOC. What emerges from the legal proceedings and government records is the role of questions of state in conflict management, matters of subjection, and the role of the States General in the legal arena.

Carmichael's case against the VOC was rooted in actions that took place in Asia. In 1612, in Ambon, the VOC seized goods he was transporting. The context of the seizure was hostilities between the Dutch and the Portuguese in Asia.[9] The Twelve Years Truce (1609-21) brought a temporary end to hostilities between the rebel provinces of the Northern Netherlands and the unified crowns of Spain and Portugal, but did not halt fighting in the Atlantic and Indian Oceans.[10] This context was relevant because Carmichael had spent the three decades before the seizure of his property in service of the Portuguese, under the name Guiliaume Jorge de Schorsia.[11] In 1612, VOC Governor Caspar (Jasper) Janszoon arrested Carmichael and his goods. Carmichael had no recourse to a VOC court at that time – the Council of Justice in Batavia was only set up in 1620, as was discussed earlier. Carmichael managed to make his way to The Hague where he used the political and legal institutions to reclaim his goods. While the court records are not explicit about it, the dispute must have been over the legitimacy of his property as good prize, as Steve Murdoch has suggested.[12]

William Carmichael petitioned the States General in an effort to see his goods returned. This he did with the support of the King of Scotland, James VI. After consulting the directors of the VOC on the matter of Carmichael's claim, the States General was convinced of the need for litigation in the case, however, they expressed their desire to see the matter resolved amicably, presumably for reasons of diplomacy. In January 1615, the States General granted Carmichael permission to pursue a court case against the VOC in the Court of Holland.[13]

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[9] This was during the period which Femme Gaastra has labelled "continual war". From 1602-1684 the VOC was engaged in battles with the Portuguese, broken by periods of truce and reduced hostilities, as well as in fighting with Asian polities as the company strove to establish dominance in the spice trade. Gaastra, *The Dutch East India Company*, 37.

[10] On the truce, and the context of the Dutch Revolt, see Israel, *The Dutch Republic: Its rise, greatness and fall, 1477-1806*, Part I&II.

[11] At the request of the VOC directors, former VOC-employees attested to his employment in Asia and subsequent role as factor for Portuguese merchants before notaries in Amsterdam. Stadsarchief Amsterdam (SAA), Notariële Akte (NA), 273, f. 189-93. Many thanks to Mark Ponte and Matthias van Rossum for pointing out these documents and generously sharing transcriptions with me.

[12] Steve Murdoch, *Network North: Scottish kin, commercial and covert associations in Northern Europe, 1603-1746* (Leiden: Brill, 2005), 208 n. 205.

[13] A. Th. van Deursen, J. G. Smit, and J. Roelevink, eds., *Resolutiën der Staten-Generaal, 1610-1670*, 7 vols., Rijks Geschiedkundige Publicatiën (Den Haag: Martinus Nijhoff/ Instituut voor Nederlandse Geschiedenis, 1971-94), II: 313 [315 September 1614]; 1387 [1622 January 1615].

By December 1616 the case had not been resolved. In fact, it is unclear whether or not proceedings had been undertaken in the Court of Holland at all.[14] But the States General had by that time received another letter from James VI, King of Scotland. The States General forwarded the letter to the VOC to peruse, along with the idea that it might be better to come to an agreement with Carmichael that would not cost the company too much rather than wait for a verdict from the court.[15] By 'the court' it is possible that the States General meant the Court of Holland before which they had given Carmichael permission to proceed. If the case followed normal procedure, it would have been heard in the Court of Holland in first instance, and from there progressed to the High Court in the event that one party appealed against the sentence. However, the 1618 sentence which is part of the High Court records indicates that the States General delegated the case to a specially constituted bench in the High Court. The opening statement of the short sentence states:

> Seen by the president and councillors from the High and Provincial Council delegated by the High Mighty Gentlemen States General of the United Netherlands, the case outstanding before the same [Gentlemen States General] between Willem Carmichael Scotsman... and the directors of the chartered East India Company of the United Netherlands.[16]

The High Court's resolution confirms that the case was delegated by the States General.[17] Of the seven judges whose opinions were recorded in the resolution, four were councillors in the Court of Holland, and the other three were from the High Court, most likely including the president.[18] The States General's initial granting of permission to pursue litigation in the Court of Holland would indicate that prior to the creation of a VOC court in Batavia, cases followed the normal progression through courts in the Republic, as depicted in Figure 2 (Introduction). However, the High Court's sentence is explicit on the involvement of the States General: it was the States General's act of delegation by which Carmichael's case was heard by the High Court judges, with judges from the Court of Holland.

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[14] Searches in the digital indexes of Court of Holland records gave no results.

[15] Deursen, Smit, and Roelevink, *Resolutiën*, II: 733 [733 December 1616].

[16] Original: "*Gesien bij den President en Raden ~~van den~~ vuijten Hogen en Prouintiaelen Ra[de] ~~ter delegatie van de~~ bijde hooch moogen. Heeren Staten Gen. vande vereenichde nederlanden gedelegeert t'process voorde selue vuijtstaende tusschen Willem Carmichel Schotsman... En de Bewinthebbers van de geoctroijeerde Oostindische Compagnie van de vereenichde Nederlanden.*" NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *887* (1618), Register der dictums... geresolveerd, unpaginated.

[17] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *642* (1618), Resoluties, unpaginated. *Delegatie* is written across the top of the resolution.

[18] Veer and Asperen were named in the resolution. According to the Huygens online database of councillors of the High Court, these two names belong to the same person. Both were known as Ellert de Veer. But it is entirely impossible from the way the resolutie is drawn up that these names belong to the same person. Regarding the president, this was most likely esquire (*Jonkheer*) Reinoud van Brederode who was president of the High Court from 1616-1620. Convincing evidence of his involvement in the case is that he signed the short sentence. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *887* (1618), Register der dictums ...geresolveerd, unpaginated.

A crucial point in the case must have been the matter of subjection. Could the goods of a man who claimed to be the subject of the King of Scotland and England, an ally of the fledgling Dutch Republic, be seized in the context of war between the Republic and Spain and Portugal? It is likely that Carmichael's claim of subjection to James VI was countered by the VOC by pointing to his work for the Portuguese, but this is not explicit in the High Court's records.

In 1618 the bench passed an interlocutory sentence. The two parties, Carmichael and the VOC directors, were ordered to appear before two councillors from the delegated bench in order to come to a settlement. That is, the bench ordered arbitration. In the event that the two parties could not be united, the VOC was required to provide the court with evidence that when the company seized Carmichael's assets in Ambon, hostilities between the Dutch and the Portuguese were already underway. If the company could prove this, then Carmichael's claim to restitution of his goods, or their value, would be denied; if the company could not provide evidence of the timing, then the company would be sentenced to return the goods, or their value, to Carmichael.[19] There are no further records in the High Court of the dispute between the two parties. But Murdoch has found evidence that the matter remained unresolved in 1622. At that point Carmichael requested letters of reprisal from James VI in order that he might regain his fortune by attacking Dutch ships.[20]

In this particular case the States General played the determining role in how a dispute over events in Ambon was brought into the legal arena in the Republic. The case was delegated to a specially constituted bench of judges from the Court of Holland and the High Court. It is likely that the case did not follow the normal procedure of justice – first instance in the provincial court, followed by appeal in the High Court – because of the issues of war and diplomacy which were in play. But if the matter was the legitimacy of prize, then the question is why the States General did not refer the case to the Admiralty board which had jurisdiction over the adjudication of prize cases.[21] Perhaps it was the pressure from James VI that led the States General to decide to delegate the case.[22] Whatever the motivation behind it, the role of the States General was decisive in the course the case followed. It is also possible that the diplomatic pressure exerted by James VI's letters prompted the States General's recommendation that the case be settled rather than taken to the end point of sentencing. Matters of war and state, subjection and prize were all at stake in the case which the States General delegated to the judges of the Court of Holland and High Court.

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[19] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *642* (1618), Resoluties, unpaginated.

[20] Murdoch, *Network North*, 208.

[21] On the admiralty boards and their jurisdiction see Louis Sicking, *Neptune and the Netherlands: State, economy and war at sea in the Renaissance* (Leiden: Brill, 2004); R. B. Prud'homme van Reine and E. W. van der Oest, eds., *Kapers op de kust. Nederlandse kaapvaart en piraterij 1500-1800* (Vlissingen: ADZ, 1991).

[22] On the role of diplomacy in prize cases see recent contributions by Thierry Allain, "International treaties versus 'bonne prise': the case of the Dutch merchant ship De Vriendschap in the Mediterranean in 1745," *Comparative legal history* 5, no. 1 (2017); Hielke van Nieuwenhuize, "Prize law, international diplomacy and the treatment of foreign prizes in the seventeenth century: a case study," ibid.

Seeking redress: Goodschalk vs. VOC

A case which took place a century later highlights the second mechanism by which the States General was involved in cases in the High Court: redress. In November 1714 the High Court passed a resolution in the case between the VOC employee Pieter Goodschalk and the Directors of the VOC. Pieter Goodschalk was a high-ranking VOC official in Java in the late seventeenth century. He was in charge (*gezaghebber*/*offerhoofd*) of the north coast of the island, at Japara. In 1697 he was appointed as the VOC deputy authority (*secunde*) in Surat, a position which he declined to take up as reported in the VOC's correspondence with the company directors in the Republic. When Goodschalk later acquiesced to go to Surat after all, his services were no longer desired: the public prosecutor, the Fiscal (*fiscaal*) was preparing charges of corruption (*knoeierijen*) against him.[23] The case that ensued is related in the High Court's resolution of 1714 but no detail of Goodschalk's alleged misdeeds were included. What is clear from the resolution is that the Fiscal, following orders from the Governor and Council, brought criminal charges against Goodschalk. The Fiscal recommended that Goodschalk be forcefully deported and declared incompetent, whipped on the gallows, banished for six years and charged a fine (*amende*) of 4000 *Rijksdaalders* (approximately *f*10,000). In the meantime, Goodschalk's goods and he himself should be seized by the company and held in custody. Goodschalk responded by requesting permission to see the papers relating to the case and asked for a month to build his defence. On 5 July 1699 the Council ordered Goodschalk be detained and his goods seized. But they were too late: Goodschalk had departed for the Republic. On 10 October 1699 he was sentenced by the Council of Justice *in absentia*. His punishment was eternal banishment from Asia (*uijt Indien*), being declared unfit for company service, a fine of 764 *Rijksdaalders* (*f*1,910), the confiscation of his goods, and the costs of the legal proceedings.[24]

Pieter Goodschalk managed to return to the Republic where he heard about the sentence passed against him in Batavia. He sought redress, first from the VOC directors, and then from the States General. Redress was not appeal: sentences passed by Council of Justice in Batavia could not be appealed in the courts in the Republic. Rather, redress was an extra-judicial right granted to high-ranking company servants in the first VOC charter. The possibility to lodge complaints with the States General followed on from the delegation of authority to the company to hire and fire governors and officers of justice. These men, the charter required, had to pledge oaths of loyalty to the States General as well as to the company. If they were found to have broken those oaths, then they could be dismissed. But it was specified that they should not be impeded from returning to the Republic where they could lodge their complaints with the States General.[25] Offering the opportunity to lodge complaints could be seen as a way for the States General to reinforce

[23] W. P. Coolhaas et al., *Generale Missiven van Gouverneurs-Generaal en raden aan Heren XVII der Verenigde Oostindische Compagnie*, 13 vols., Rijks Geschiedkundige Publikatiën (Den Haag: Martinus Nijhoff, 1960-2007), VI: 41, 45 (46 December 1698). What the corruption charge was about is not specified in the Generale Missiven, neither in the case in the High Court.

[24] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *666* (1714)*,* Resoluties, scan 31.

[25] Article 35 published in Witteveen, *Een onderneming*, 95.

the loyalty of high-ranking company men to the States General, as well as a means to impose checks and balances on the company. The States General did not deal with the matter themselves but directed (*renvoij*) Goodschalk to the institutions of justice, specifically the High Court which was requested to take the matter under examination.[26] This has at least two important implications. Firstly, the States General took on the role of connecting separate jurisdictions. Secondly, the States General effectively imposed limits on the VOC's exercise of sovereignty manifest in competence and jurisdiction of the Council of Justice in Batavia. Via the extra-judicial channel of complaint to the States General, the VOC's delegated sovereignty was constrained.

The States General's decision to direct Goodschalk to the High Court rather than to the Court of Holland can perhaps be explained by the States General's position in the Republic constituted by powerful, sovereign provinces. Choosing the High Court was possibly a powerplay of their own in a federalised, republican system in which the provinces in the Republic had great power, and the central governing institution, relatively little.

According to the High Court records, Pieter Goodschalk was the claimant in a case in first instance against the directors of the VOC, that is the directors of the company as a whole, not of a specific chamber. For their part, the directors were recorded as the party that entered an official protest (*excipienten*).[27] It is very clear from this that the case between Goodschalk and the VOC was not an appeal case. This is underscored by the legal provision that appeal can only be sought if the parties are present for sentencing, which Goodschalk was not.[28] What was at stake in the case was the validity of the Batavia sentence which was passed on 10 October 1699 and the implications of whether or not the High Court recognised the sentence as valid or voided it. How the VOC in particular went about making these arguments reveals a larger problem of the Batavia Council of Justice's competence and jurisdiction and brings to the fore the company's legal strategy.

In first instance, Goodschalk made claims to have the Batavia sentence against him nullified and the situation remedied as if the sentence had not been passed or executed. He alleged that the Council of Justice in Batavia did not have the competences to judge his case, that is, did not have the legal ability to exert jurisdiction over him. In consequence of the court's lack of competences, he claimed that the sentence against him was null and void, and that it was against the law. In addition, he claimed his previously seized goods and wages, and that the company compensate costs.[29]

That the company entered a protest has already been mentioned, but the substance of that protest brings to light a strategy which appears in other cases too. The company

[26] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *666* (1714), Resoluties, scan 31. In legal terms, *renvoij*/*renvoy* was to direct a case to a different court. More specifically, it was a protest by a party which had been summoned to court to be released from proceedings there and face litigation before his ordinary judge (*dagelykzen Rechter*). Franciscus Lievens Kersteman, *Practisyns woordenboekje, of verzameling van meest alle de woorden in de rechtskunde gebruikelyk* (Dordrecht/ Den Haag: Ab. Blussé en zoon/ Centraal Bureau voor Genealogie, 1785/ 2005), 94.

[27] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *666* (1714)*,* Resoluties, scan 31.

[28] Thanks to Harry Dondorp for making this difference so clear. Personal communication, Jan/Feb 2016.

[29] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *666 (1714),* Resoluties, scan 31.

directors argued *litisfinitie* and *incompetentie*. *Litisfinitie* meant that the dispute between the litigants had already been finalised in legal proceedings in another court, referring to the fact that the Council of Justice had already passed a sentence and thus concluded the case.[30] But in order for this argument to hold, the sentence of the Batavia court had to be declared valid. If it was valid, then the legal proceedings were finalised by the 1699 Council of Justice sentence. *Incompetentie* was the argument that the High Court in The Hague did not have the competence to adjudicate the matter. The grounds for this were not detailed. What the company sought essentially amounted to extradition.[31] There were a number of cases in which the company argued for extradition to Batavia on the grounds of *litispendentie* – that a litigant return to face ongoing legal proceedings – or *litisfinitie* – face the execution of a sentence which had already been passed. The high-profile case between Frans Canter's family and the VOC in the 1750s was one such case. In that case not only did the VOC argue that Canter should be extradited, but a jurisdictional dispute erupted between the courts in Holland over which institution had the competence to make the decision whether or not he should be sent to Batavia as the company had claimed. That particular case was unusual in that it became a *cause célèbre* but the legal strategy was certainly not unique.[32] Other cases in which the VOC argued for extradition to Batavia are discussed in later chapters.

In the Goodschalk case, both parties argued that certain courts were not competent to deal with the case. Goodschalk's claim that the Batavia sentence against him was invalid was surely predicated on his argument that that court did not have the jurisdiction and competence to hear and determine the case. In contrast, the VOC directors' claim that Goodschalk should be extradited was connected to their argument that the High Court was not the court in which the case should be judged. The VOC employed this legal strategy in a number of cases, which indicates that the company was trying to keep conflict resolution in-house, that is, within the company's own legal system where the Batavia Council of Justice sat atop a hierarchy of company courts. But the company did not succeed in managing and resolving conflict internally. The jurisdiction of the Batavia court and the insulation of the company's legal system was not consistently reinforced, neither by the States General nor by the High Court. In responding to Goodschalk's complaint by directing him to the High Court, the States General played the determining role in connecting otherwise separate and insulated legal systems.

Both William Carmichael and Pieter Goodschalk succeeded in turning their personal conflicts with the VOC into significant questions of sovereignty and jurisdiction, played out on a global scale. They escaped the VOC in Asia – Ambon and Batavia respectively – to return to the Republic and leverage the States General in their favour. Carmichael made use of diplomacy and subjection in his claim to goods seized from him, while Goodschalk's case touched on the very limits of company sovereignty and jurisdiction. Individuals transported their disputes to the Republic, and the States General transferred them – via delegation and redress – to the High Court.

[30] *Litisfinitie* is defined in Kersteman, *Practisyns*, 60.
[31] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *666 (1714),* Resoluties, scan 31.
[32] Gelder, "De kas van de compagnie."

From company court to High Court: the WIC

The relationship between company courts in the Atlantic and the High Court of Holland, Zeeland and West-Friesland was fundamentally different from the relationship between the High Court and the Council of Justice in Batavia outlined earlier. In spite of attempts to create central nodes in the Atlantic, there was no WIC Atlantic equivalent of Batavia. There was not a single, WIC headquarters which functioned as the administrative and judicial authority over company ports and posts and their local institutions.[33] The Council of Justice in Batavia was, at least in theory, a court in which sentences from the Councils of Justice elsewhere could be appealed. There was no such WIC court in the Atlantic. Rather, the States General Court of Appeal for West Indian cases (*Hof van Appél*) functioned as an Atlantic version of the Council of Justice in Batavia. In contrast to the insulated VOC judicial system, WIC company courts were connected to the judicial system in the Republic.

At some point in the early eighteenth century, the States General established a Court of Appeal for West Indian Cases. The court may have existed before then, but the earliest records which exist in the collection are dated 1716. The Court of Appeal was less a separate legal institution than a function of the States General. Through the Court of Appeal the States General received two kinds of cases from courts in the Atlantic colonies: cases which a company court could not rule on, and cases in which one of the parties sought revision of a company court's sentence.[34] It is the revision cases which are relevant to understanding the role of the States General in connecting jurisdictions.

The relationship which was established between WIC courts and the High Court in the Republic was not a direct line of appeal – the States General played the role of connector of jurisdictions. Aggrieved parties could seek revision – understood as a form of appeal – from the States General Court of Appeal.[35] The States General then delegated the cases to the High Court. The records of the Court of Appeal, while likely incomplete, show that it was specifically the High Court that was used by the States General. The

[33] During the seventeenth century there were attempts to establish central nodes. Thus, the small Caribbean islands Aruba and Bonaire were subordinate to nearby Curaçao. Likewise, the Caribbean islands St. Maarten and Saba fell under nearby St. Eustatius. In the mid-1600s, the WIC directors, with the approval of the States General, chose to bring Curaçao and New Netherland under the same governor, for which position Pieter Stuyvesant was chosen. Cornelis Ch. Goslinga, *The Dutch in the Caribbean and on the Wild Coast, 1580-1680* (Assen: van Gorcum, 1971), 280-281; Jordaan and Schillings, "Organisatie van bestuur en rechtspraak," 4, 6. Around the same time, in the 1640s, Johan Maurits was governor of Dutch Brazil. Following conquests on the West Coast of Africa, he suggested that they be placed under the administration of Recife, that is, under his control. However, Charles Boxer notes, Maurits's suggestion was not taken up. Rather, the new conquests were controlled by the WIC via a General at Elmina and a factor at Loanda. Charles R. Boxer, *The Dutch in Brazil, 1624-1654* (Oxford: Clarendon Press, 1957), 108. While there was some hierarchy in the charter area, the jurisdictions were not all subordinated to one appellate company court.

[34] Karwan Fatah-Black analyses the legal system and gives examples of cases in Fatah-Black, "Between the plantation and the States General: the revisions court as part of Paramaribo's legal system."

[35] N. M. Japikse and A. van der Poest Clement, *Inventaris van het archief van de Staten-Generaal, (1431) 1576-1796* (Den Haag: Nationaal Archief, 1969; 2010), 375.

register of cases comprises those "before the States General" and those "before the High Court on order of the States General."[36]

The High Court judges acted in an advisory capacity, as Karwan Fatah-Black has pointed out.[37] The States General delegated the writing of a sentence to the judges, who then forwarded the sentence to the States General. The judgments passed by the States General in cases of appeal from company courts in the Atlantic were always based on the sentences written by the judges of the High Court or specially constituted benches.[38] The States General recorded the sentences in their resolutions (*resoluties*) and they thus became legally-binding.[39] According to the High Court records then, there seems to be a difference between the writing of the sentence and the passing of the sentence, which were done by the High Court and the States General respectively. That distinction would also explain why the sentences drawn up for the States General Court of Appeal do not appear in the registers of sentences in the High Court records.

Karwan Fatah-Black has analysed the cases in the Court of Appeal records and the relationship between colonial courts and courts in the Republic, focussing specifically on Suriname. He indicates that, via the States General's Court of Appeal, the High Court essentially functioned as a court in second instance for cases which originated in the Atlantic colonies while it was a court in third instance in the legal framework of the Dutch Republic, as was discussed in the Introduction (see Figure 1).[40]

The records of the Court of Appeal include 104 cases of revision which came to the court from Suriname, Curaçao, and colonies such as Demerary and St. Eustatius.[41] Interestingly, there are no cases from the WIC's colony on the West Coast of Africa, Elmina. This may be a feature of the Court of Appeal's competence and jurisdiction – that it was only for cases which came from WIC courts in the Americas. It may also be the consequence of the limited survival of sources.

A case between Isaac Minet of Dover, freighter of *The Happy Return*, and the directors of the WIC shows exactly how the relationship between the States General and the High Court worked in the acquisition of advisory sentences for Atlantic cases. The case does not feature in the Court of Appeal records, but appears in the register of delegated cases in the High Court records.

The dispute between Minet and the WIC was rooted in an incident which took place off the West Coast of Africa. The WIC seized a ship named *The Happy Return* which was

[36] An example of the former is NL-HaNA, Staten-Generaal, 1.01.02, inv. nr. 9495, Dossier betreffende het proces voor de Staten-Generaal van Marcelis Jacobi.... An example of the latter is NL-HaNA, Staten-Generaal, 1.01.02, inv. nrs. 9491-2, Dossiers betreffende het proces voor de Hoge Raad van Holland in opdracht van de Saten-Generaal van Abraham ter Borch.

[37] Fatah-Black, "Between the plantation and the States General: the revisions court as part of Paramaribo's legal system," 10.

[38] In fact, this was also the same process which was followed for cases which came from courts in the Generality Lands (*Generaliteitslanden*). Japikse and Clement, *Inventaris van het archief van de Staten-Generaal*, 24 n. 43.

[39] Ibid.

[40] Fatah-Black, "Between the plantation and the States General: the revisions court as part of Paramaribo's legal system," 10.

[41] Ibid., 10-11.

(allegedly) trading illegally within the company's monopoly area.[42] The ship was taken to Elmina where legal proceedings followed. The Elmina court, that is the Director General and Council, passed a sentence against *The Happy Return* in 1730.[43] The freighter of the vessel, Isaac Minet of Dover, was displeased with the verdict. He addressed himself to the States General where he appealed the verdict of the Elmina Court. The States General then asked the High Court to draw up a sentence in the case, communicating with the court via letters.[44] The court's letter dated 5 December 1736 recounts that the States General sent a letter (11 December 1732) to the court

> with the request that we [the High Court] would bring the case between parties before the learned men to examine the same and thereupon formulate a sentence and send [it] to Your High Mightiness [the States General] to be approved, given out and executed without any changes as it should be.[45]

The sentence was drawn up as requested, and sent back to the States General with the polite hope to have fulfilled the wishes of the States General satisfactorily.[46] The States General passed a resolution which was in effect, the passing of the sentence drafted by the High Court. The States General used the same language as the High Court did in making sentences binding: "The aforementioned High and Mighty States General pronounce justice."[47] The sentence which was passed by the States General judged the Elmina Court's decision of 24 July 1730 to be fair. Isaac Minet, as the losing party of the appeal case, was condemned to pay the fees of the legal proceedings as determined by the States General.[48]

In this particular case, the High Court sentence was passed by the States General with no alterations. This may have been a general pattern in delegated cases where the States General differentiated between writing and passing sentences. If so, the passing into law of advisory sentences would indicate that the States Genereal was claiming direct sovereignty over the Atlantic sphere. That the States General was also asked to adjudicate cases which the company court judges could not rule on – did not know how to or were split in their votes – reinforces this idea. If, however, the States General altered advisory sentences drawn up by the High Court for delegated cases, the changes made would

[42] This particular case is discussed further in Chapter 3 on the breaching of monopolies through illegal private trade.
[43] It is likely that this sentence was passed against the captain of the vessel but this is not explicit in the High Court records. On the WIC court in Elmina see Heijer, "Institutional interaction on the Gold Coast."
[44] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *968* Sententies in gedelegeerde sake, scan 9.
[45] Original: "*met versoek dat wy de voorsz. zake tusschen partyen verder in state van wyzen wilden doen brengen, dezelve examineren, en daar op een Dictum van Sententie formeren, en aan U Ho: Mo: laten toekomen, om zonder eenige verandering gearresteert, uitgegeven en geexecuteert te werden naar behoren.*" NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *968* Sententies in gedelegeerde sake, scan 9.
[46] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *968* Sententies in gedelegeerde sake, scan 9.
[47] Original: *"De Hoog gem[elde] Heeren Staten Generael doende Regt"* NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *968* Sententies in gedelegeerde sake, scan 9.
[48] Original: "*te weezen niet bezwaart*; *Condemneert den zelven in de kosten van den Processe tot taxatie van haar Ho[og] Mo[gende].*" NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *968* Sententies in gedelegeerde sake, scan 9.

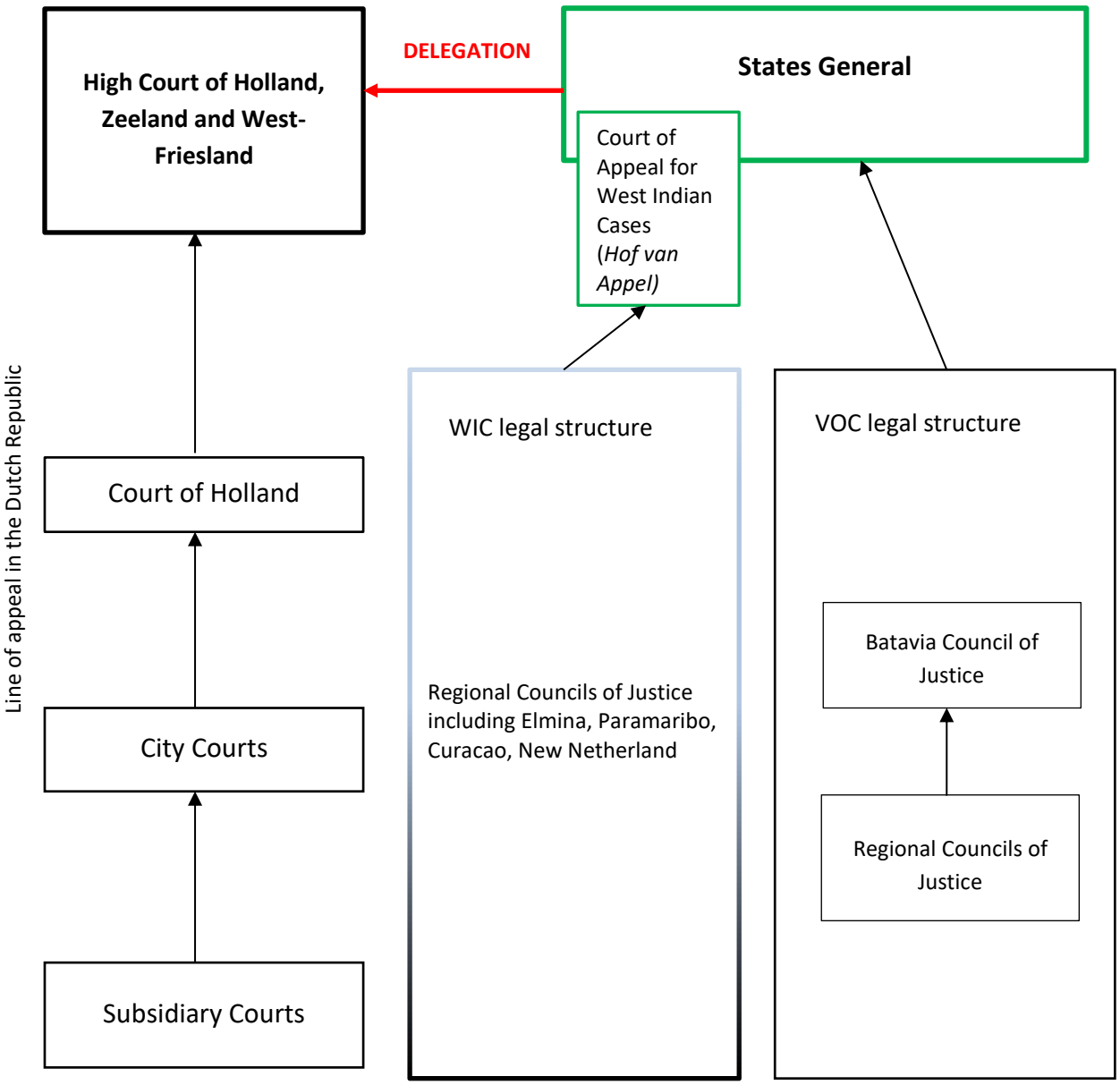
illuminate the States General's political and legal position on Atlantic conflicts. Further research in the Court of Appeal records would deepen the understanding of the extent to which the States General delved into Atlantic legal issues.

It is clear that the States General played a very important role in providing a way for cases from the Atlantic courts of the WIC to be appealed when there was no single company court which held jurisdiction over the Councils of Justice established in different locations. The Court of Appeal fulfilled this function, in which the States General acted as judges by passing sentences which had been drawn up by the High Court. The relationship set out between WIC courts and the courts in the Republic on the one hand, and the VOC courts and the courts in the Republic on the other hand, was very different. The VOC legal system was set up as an insulated, company structure with no connection to the courts in the Republic. The WIC legal system was not sealed off in this way. In spite of the different set-up in the charter area, the mechanism of delegation by which the States General connected jurisdictions was the same for both east and west. The nature of the VOC legal system as insulated in design, if not in practice, raises the question whether or not the VOC was better equipped or perhaps even more successful at keeping disputes in-house. An indication that this was a legal strategy pursued by the company is the reocurring request to have cases sent back to Batavia based on arguments that the High Court did not have the competence to deal with the cases in question. The structure of each company's legal framework and the role of the States General is depicted in Figure 3.

The Litigants

There have already been hints from the foregoing cases that the structure of the companies – being based on Chambers in specific cities – was significant in the bringing of suits against the VOC and the WIC. In fact, it is clear from the cases against the companies that an individual chamber was a party more frequently than a company as a whole. This is explained by the way that the companies were organised around city-based chambers to which administration, authority and liability were devolved. The cases against the companies involved a range of litigants. The main distinction is between corporate and individual litigants: corporate litigants were Dutch and foreign companies; individual litigants were organised as collectives or sued individually. Cutting across these categories, were men and women, insiders and outsiders, subjects of the States General and foreigners. The wide range of litigants who used the court points to the accessibility of the institution. Furthermore, that litigants of different social strata summoned the VOC and WIC to court indicates that the companies were not perceived as too strong or embedded in political and legal circles to warrant opposing them.

Figure 3: Company courts and the courts in the Republic, connected by the States General



The VOC and WIC, taken together, were parties in 158 sentences over the seventeenth and eighteenth centuries. It was more often the directors of individual chambers who were named as the litigants than the board of directors of the whole company.[49] The federalised company structure meant that chambers were responsible for the employment of crews, the building and equipping of ships, share subscriptions, and the sale of return goods.[50] Jan de Vries and Ad van der Woude have commented on the structure of the VOC, noting the decentralisation which characterised the company organisation in the Republic.[51] The WIC was similarly decentralised in the Republic. Over the course of the seventeenth century, Henk den Heijer claims, each company began to function more as a unit, but not to the extent where we could consider either organisation to have developed into a centrally directed company.[52] The companies remained decentralised in structure. It follows that disputes relating to any of the tasks devolved to chamber level would involve a specific chamber rather than the company as a whole. For instance, when the Bartolotti family used the court to claim shares in the VOC Chamber Hoorn, they sued the directors of that chamber specifically, rather than the Gentlemen Seventeen of the company as a legal entity. The litigants were recorded as "the directors of the East India Company here of the chamber of Hoorn."[53]

Determining the difference between suing the board of directors of a company and suing chamber directors is hampered by the number of sentences which do not specify a chamber, but just record the litigants as the directors of the company. Those may be indications that all the chambers, represented by the board of directors, were being sued. While this is a possibility, it is unlikely given that there were also cases in which litigants were recorded as the "Directors of the general East India Company."[54] The inclusion of 'general' in those formulations is a better indicator that the company as a whole was being sued rather than the directors of one of the chambers. Furthermore, there were four cases in which reference to the board of directors and all directors was made in naming the litigants. Two VOC cases named the Gentlemen Seventeen as the party, and both dealt with bills of exchange for large sums of money which the directors suspected were the proceeds of illegal private trade conducted by high-ranking administrators in Asia; the third VOC case named the representative of the Prince of Orange as chief director (*opperbewindhebber*), the Chamber Amsterdam and other directors as the litigant, and

[49] Martijn Punt comments on this too. He states: "The concept of the Dutch East India Company possessing legal personality is contradicted by the fact that the Dutch East India Company did not usually act as a participant of proceedings itself. Legal proceedings usually took place in the name of the administrators [directors; *bewindhebbers*] and judgement was also passed upon them." Punt, "Het vennootschapsrecht," 290.
[50] On the various tasks which the chamber directors undertook, and the commissions in wich they were organised, see Heijer, *De geoctrooieerde compagnie*, 129-139.
[51] They contrast this to centralisation which characterised the VOC overseas. The locus in the Indian Ocean was, from 1619/20, Batavia. Jan de Vries and Ad van der Woude, *The First Modern Economy: Success, failure, and perseverance of the Dutch economy, 1500-1815* (Cambridge: Cambridge University Press, 1997), 387.
[52] Heijer, *De geoctrooieerde compagnie*, 122.
[53] Original: "*De Bewinthebbers van[de] Oostind[ische] comp[agnie] alhier ter camere van Hoorn*." NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *651* (1655), Resoluties, scan 93.
[54] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *665* (1713), Resoluties, scan 137; inv. nr. *666* (1714), Resoluties, scan 32; inv. nr. *667* (1721), Resoluties, scan 125.

that case too involved large sums of money, likely from illegal private trade or other forms of corruption in Asia.[55] There is a single WIC case which named Jacob de Peterson as the party, as representative of the Prince of Orange and directors of the WIC. This case was about how prize should be divided between the different company actors, and was likely about reigning in the power of a colonial administrator who was overstepping the limits of his office.[56] On the basis of these cases it is difficult to pinpoint a clear distinction between cases against the company as a whole and those against a specific chamber. The role of the boards of directors of each company as deciding the policy which the chambers would then implement would indicate that matters to do with what constituted the companies would be pursued against the directors, matters which related to the activities of the companies would name chamber directors as the party. The distinction would thus be between what the companies were and what the companies did. But the cases mentioned above, and discussed in the following section do not appear to bear this out.

In terms of liability, it is significant to try to disentangle cases against private individuals who held a directorship and cases against chamber directors as representatives of the companies. According to both Matthijs de Jong and Martijn Punt, the VOC and WIC held assets which were separate from the assets of directors and investors. The companies as they were established in public law were liable to third parties; directors were representatives of the companies and were not liable in their private capacity.[57] This clarity was not immediately apparent from the founding charter of the VOC but, as Guiseppe Dari-Mattiacci *et al* point out, was a contractual innovation which developed in the period up to late 1623.[58]

Patterns in the recording of litigants give clear indications of when a case was brought against a company and when a case was against an individual who held a company directorship in his private capacity. In the former, the litigant was recorded as company directors of a chamber, for instance 'The directors of the East India Company, of the chamber resident in Middelburg'. In contrast, when a case was recorded against an individual in his private capacity he was named, and the fact that he was a director in a company chamber was added as a further clarification. Cases which involved men who were company directors acting in their capacity as private individuals have not been included in this analysis due to the personal, rather than corporate nature of those cases.[59] That is not to say that the matter of liability was clear-cut: whether or not directors' assets were vulnerable to claims against the companies took time to clarify, as discussed above and is revisited in the cases in later chapters.

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[55] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *809* (1705), Register der dictums... geresolveerd, scan 267; inv. nr. *647* (1743), Resoluties, scan 80; inv. nr. *922* (1768), Register der dictums...geresolveerd, scan 173.

[56] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *864* (1782), Geextendeerde sententie, scan 31, f. 30r.

[57] Jongh, "Tussen *societas* en *universitas*," 126; Punt, "Het vennootschapsrecht," 289-291.

[58] Dari-Mattiacci et al., "Corporate Form."

[59] A case like Jacob Pergens, WIC director in Amsterdam chamber versus Johan Beck, of Middelburg, is not part of my analysis of company cases. For this case see NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *978* (1660), Register der dictums ....geresolveerd, scan 375-6. There are many more examples of directors as litigants in their private capacity.

The VOC's own records indicate that there were at least some cases for which the chambers solicited advice on whether or not to pursue an appeal. In the second half of the eighteenth century, perhaps before, the chambers consulted with one another and with the company's legal team in The Hague. For instance, the Amsterdam and Rotterdam Chambers of the VOC exchanged letters regarding whether or not to appeal against a sentence passed by the Maritime Court (*Zeerecht*).[60] The Chambers also consulted with the company lawyers in The Hague who advised on whether or not to appeal sentences or seek revision of cases. During the 1780s, the Amsterdam Chamber sought the company lawyers' advice on whether or not to appeal against a sentence passed by the Court of Holland which the chamber felt was unfair. The matter was discussed and the chamber directors decided not to appeal the provincial court's ruling.[61] This has two important implications. Firstly, that the VOC kept a team of lawyers on retainer in The Hague indicates that the company expected continual litigation. Secondly, it is possible that the company's legal strategy was given some coherence by the fact that it was directed from The Hague. Pursuing litigation was not a matter solely for a specific chamber; it involved interaction with other chambers and, importantly, communication with the company's lawyers in The Hague. These men advised the chambers in legal matters: that they were asked to advise the chambers on whether or not to pursue appeals and revision indicates that part of their job was to weigh up the likelihood of a successful overturning of the previous sentence, factor in the costs, and draw up a recommendation. Chambers do not seem to have made decisions regarding progression of cases independent of other chambers and the company's lawyers. This likely led to some coherence in legal strategy.

It was not only the VOC which had a legal team at the ready. According to Alexander Bick, the board of directors of the WIC, the Gentlemen Nineteen, had a team of lawyers employed to deal with lawsuits brought against the company specifically by foreign merchants and governments. Simon van Beaumont who was the secretary to the city of Middelburg and a company director himself, was one such lawyer, as was Amsterdam lawyer Gijsbert Rudolphi.[62] The latter took up a seat on the bench of the High Court later in his career and in that capacity was involved in adjudicating cases which involved the WIC.[63] It is likely that the WIC's involvement in privateering and cruising against illegal private traders warranted this team of lawyers who could advise the company in matters relating to the legitimacy of prize and confiscated goods.[64]

Who were the opponents which the companies faced in court? Among the VOC's and WIC's opponents, I have identified corporate and individual litigants. Within these

[60] NL-HaNA, VOC, 1.04.02, inv. nr. *308,* scan 710, f. 436.
[61] NL-HaNA, VOC, 1.04.02, inv. nr. *308,* scan 710, f. 436.
[62] Bick, "Governing the Free Sea," 129.
[63] Gijsbert Rudolphi van Nideck: http://resources.huygens.knaw.nl/repertoriumambtsdragersambtenaren1428-1861/app/personen/8728 (accessed 2017-12-06).
[64] That legal men were salaried employees of the company is clear from WIC Chamber Zeeland resolutions of 1672. The directors agreed to pay Advocate Miller's salary for the cases he had served on in the courts of Holland. The record does not specify if he was in full-time employ in this capacity. Nationaal Archief, Den Haag, Oude West-Indische Compagnie (OWIC), nummer toegang 1.05.01.01, inventaris nummer *31*, Notulen K. Zeeland, scans 84-5 (26 May 1672).

categories, there were men and women, insiders and outsiders, subjects of the States General and foreigners. These litigants populate the cases in subsequent chapters; a short overview of each category of litigants follows here.

The VOC and the WIC were both involved in court cases against corporate litigants, namely rival companies. In the early years after the chartering of the VOC, the company faced protracted legal action from Olivier van Noort's Magellan Company and Isaac Le Maire's Australia Company.[65] These companies were both based in Holland and sought the maintenance or acquisition of trading privileges which infringed on the VOC's monopoly, resulting in disputes which were taken to the High Court. These disputes were concluded by the 1630s. Litigation between the WIC and rival companies came in a different form: the WIC was involved in legal disputes with foreign companies represented by individuals who had power of attorney, that is, from factors who represented foreign principals. These cases arose as a result of entering the WIC's monopoly charter area, ostensibly with permission. The unnamed proxy of the French West India Company was recorded as a litigant in a sentence against the WIC in 1667. The case was about the seizure of the ship *Europa* which was trading on the West Coast of Africa, allegedly with permission from the States General to set sail from the Republic.[66] Similarly, Henrij Momber, the Amsterdam factor of the Courland Company, was named as a party in High Court sentences dated 1666, 1669 and 1670.[67] Momber claimed to have entered into a contractual agreement with two chambers of the WIC granting access to certain parts of the West Coast of Africa for Courtonian ships.[68] These cases involving the WIC were about entrance into the company monopoly area by foreign companies, pursued by factors in Holland. Both disputes took place in the 1660s; the contested trade was that on the West Coast of Africa; and each case involved the seizure of a ship. This leads to the conclusion that the VOC and WIC faced different types of opposition from rival companies. The VOC faced challenges from Dutch rival companies which tried to constrain the VOC's monopolies. In contrast, the WIC dealt with foreign rival companies which entered its charter area by contract.

In addition to corporate litigants, the VOC and WIC sued and were sued by individuals, who undertook collective action or sued alone. The quintessential example of collective action was a wage dispute brought by the surviving officers and crew of the WIC ship *Arnemuijden.* Together, they sued the Zeeland chamber for themselves and represented the heirs of their deceased fellow seamen. As Chapter 4 details, they claimed

[65] This is discussed in detail in Chapter 2. For scholarly work on these two men and their undertakings see J. W. Ijzerman, ed. *De reis om de wereld door Olivier van Noort, 1598-1601*, 2 vols., Werken uitgegeven door de Linschoten-vereeniging ('s-Gravenhage: Martinus Nijhoff, 1926). And Dirk Jan Barreveld, *Tegen de Heeren van de VOC. Isaac Le Maire en de ontdekking van Kaap Hoorn* (Den Haag: Sdu Uitgevers, 2002).

[66] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *654* (1666), Resoluties, scans 132-3.

[67] 1666: NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *758,* Geextenteerde sententies, scan 131-41; inv. nr. *654,* Resoluties, scans 52-3.
1669: NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *654*, Resoluties, scan 255.
1670: NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *655*, Resoluties, scan 27.

[68] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *758* (1666)*,* Geextenteerde sententies, scan 131-41.

their wages from the WIC Chamber Zeeland.[69] That such a case was heard in the High Court of Holland and Zeeland indicates that collective legal action was permitted.[70] Other examples of collective action cases also involved wages: holders of VOC servants' wage accounts sued for payment together, as did some heirs in inheritance cases.[71]

There were also heirs who sued the company individually. Hans Boije, whose case against the VOC is discussed in Chapter 4, is one such man. He was a relative of a VOC employee whose wages he claimed from the company chamber. A further example of this kind of individual litigation is the two cases over inheritance from the deceased estate of Jan Maertens. Two heirs, both young women, sued individually for their portion of the estate. However, they were represented in court by men – guardians or husband. Analysis of these two cases of preference in bankruptcy relating to inheritance are part of Chapter 6.

The people who make up the categories corporate and individual litigants were mostly men. The women who were named in cases ranged from company servants' family members to owners of cargo on board seized vessels. An example of the former was Neeltje Claes, mother and heir of deceased VOC skipper Claes Boudewijns de Vlaming. She was involved in litigation against the VOC, which is discussed in Chapter 4. The woman who was named as an owner of cargo was an English noblewoman resident in Lisbon, according to the court records. She was one of a number of individuals represented by Captain Jan Daniels who reclaimed goods sold by the WIC at auction. This case, which dealt with property rights in the context of prize and subjection, is discussed in Chapter 6.

Corporate and individual litigants were both insiders and outsiders. By insiders I mean the men who were company employees or shareholders. These men had a direct link to the VOC and WIC chambers. Outsiders were those people who did not have such a link to one of the companies' chambers. Men and women who sued for wages and inheritance were the family members or creditors of company employees but were themselves not in direct company service. Such individuals can be seen as outsiders. Furthermore, a man such as Olivier van Noort, mentioned above, is also categorised as an outsider – he was certainly not a company employee or investor; rather he was an outside rival.

Foreigners can be identified among the corporate and individual litigants who appeared in court against the companies. For instance, Samuel and Metgens Elders, relatives of a company servant who died while in company employ, sued the VOC over

[69] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *726* (1634), Geextenteerde Sententies, scans 89-90; inv. nr. *646* (1634), Resoluties, scan 42; inv. nr. *891* (1634), Register der dictums ...geresolveerd.

[70] See Merulæ on intervention, joining a suit (*voegen*), and holding power of attorney (*procuratie*) for multiple people: Pauli Merulæ, *Manier van procederen, in de provintien Holland, Zeeland ende West-Vriesland, belangende Civile saken* (Delft: Adriaan Beman, 1705), 273-285, 445-276.

[71] A group of 12 men sued the VOC collectively for payment of wage accounts. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scans 2-22 ff. 1r-20v; inv. nr. *673* (1741), Resoluties, scan 5-6. Samuel and Metgen Elders, siblings, sued for their inheritance together. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *778* (1686), Geextendeerde sententies, f. xxxiii v-cxxxvii r. Both of these cases feature in Chapter 4.

what they claimed as their inheritance from their brother's estate. The court records note that they were from Hamburg.[72] The case between the Elders and the VOC Chamber Amsterdam is an example of two individuals, a man and woman, both 'outsiders' and foreigners, who used the courts in the Republic to claim wages they believed were due to them as their inheritance. That the High Court was accessible to those neither originating from nor resident in the Dutch Republic is clear. Cases of various kinds involved foreign litigants.[73] One of the reasons why foreigners were drawn into legal disputes with the companies was both the VOC and WIC's employment of foreigners, particularly as soldiers and sailors. Based on company administration records, scholars have shown that the VOC employed numerous men from outside the Dutch Republic, in particular soldiers from the German lands, and Scandinavia.[74] In addition, foreigners invested in the companies. Foreigners were also involved in cases that were unrelated to company employment and shareholding: the case between Scotsman William Carmichael and the VOC, which was discussed earlier, demonstrates this point.[75]

The corporate and individual litigants who opposed the VOC and the WIC in the High Court were a diverse group which encompassed men and women, insiders and outsiders, locals and foreigners. This indicates that the High Court was accessible to a wide range of people. Moreover, wealth, familial and political connections, or the lack thereof, can reasonably be used as indicators of social standing. Based on these factors, we can add that the litigants who appeared in court came from a range of social strata. On one end of the scale were wealthy, politically-connected men such as Isaac Le Maire, Olivier van Noort who were involved in corporate litigation (Chapter 2) and the Bartolotti family of company investors (Chapter 5). Men such as Laurens Verpoorten and his son Michiel Verpoorten were likely men of high standing and means too, as they held civic positions in Rotterdam and were involved in mercantile activities including sending ships to trade in the Atlantic and buying colonial goods in the Republic (Chapters 2 and 6). For some VOC and WIC servants company employ was their route to greater wealth: Jan Schull is an example of a man who started his VOC career at the very bottom of the shipboard hierarchy and over the course of a career made his way up to the position of supercargo where his salary was higher and his opportunities for personal enrichment greater (Chapter 4). On the other end of the scale were relatives of low-ranked company servants, who likely had no political connections and little financial and material wealth. The collective action wage claim by the officers and crew of the *Arnemuijden* must have involved at least some litigants of meagre means who were sailors themselves and

[72] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *778* (1686), Geextendeerde sententies, f. xxxiii v-cxxxvii r. Samuel and Metgen's brother Fredrich Elders is not in the VOC database of employees. However, there is a record of the ship *Het Witte Peert* on which he sailed: http://vocsite.nl/schepen/detail.html?id=11998 (accessed 2015-06-13).

[73] The case involving Isaac Minet of Dover, England, is discussed in Chapter 3. Other foreigners in the High Court include Samuel and Metgen Elders resident in Hamburg (vs. VOC, 1686), Martin Barts of Gluckstad (vs. WIC, 1660) and Thomas Laleij, English merchant in Middelburg (vs. VOC, 1621).

[74] Gaastra, *The Dutch East India Company*, 88-92; Gelder, *Het Oost-Indisch avontuur*; Lucassen, "A Multinational."

[75] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *887* (1618), Register der dictums...geresolveerd; inv. nr. *642* (1618), Resoluties, scans 3-4.

widows and relatives of deceased crew (Chapter 4). An explicit reference to the poverty of a litigant can be found in another wage claim case: Neeltje Claes was granted the opportunity to proceed against the VOC Chamber Amsterdam pro deo and the chamber directors from whom she claimed her deceased son's wages took her poverty into consideration in their argument (Chapter 4). Tracing familial alliances, political connections and the financial resources of the High Court litigants is not always possible but where such detail is available, it is incoporated in the case analyses in each chapter. The above examples, which are fleshed out later, give sufficient evidence to conclude that litigants came from a range of social strata.

Within the wide range of people involved in court cases are some repeated litigants – men or women who were named as a party in multiple sentences.[76] Were they involved in more than one case against a company, or were multiple sentences drawn up in a single dispute? It is to this question that we now turn.

Categorisation of cases

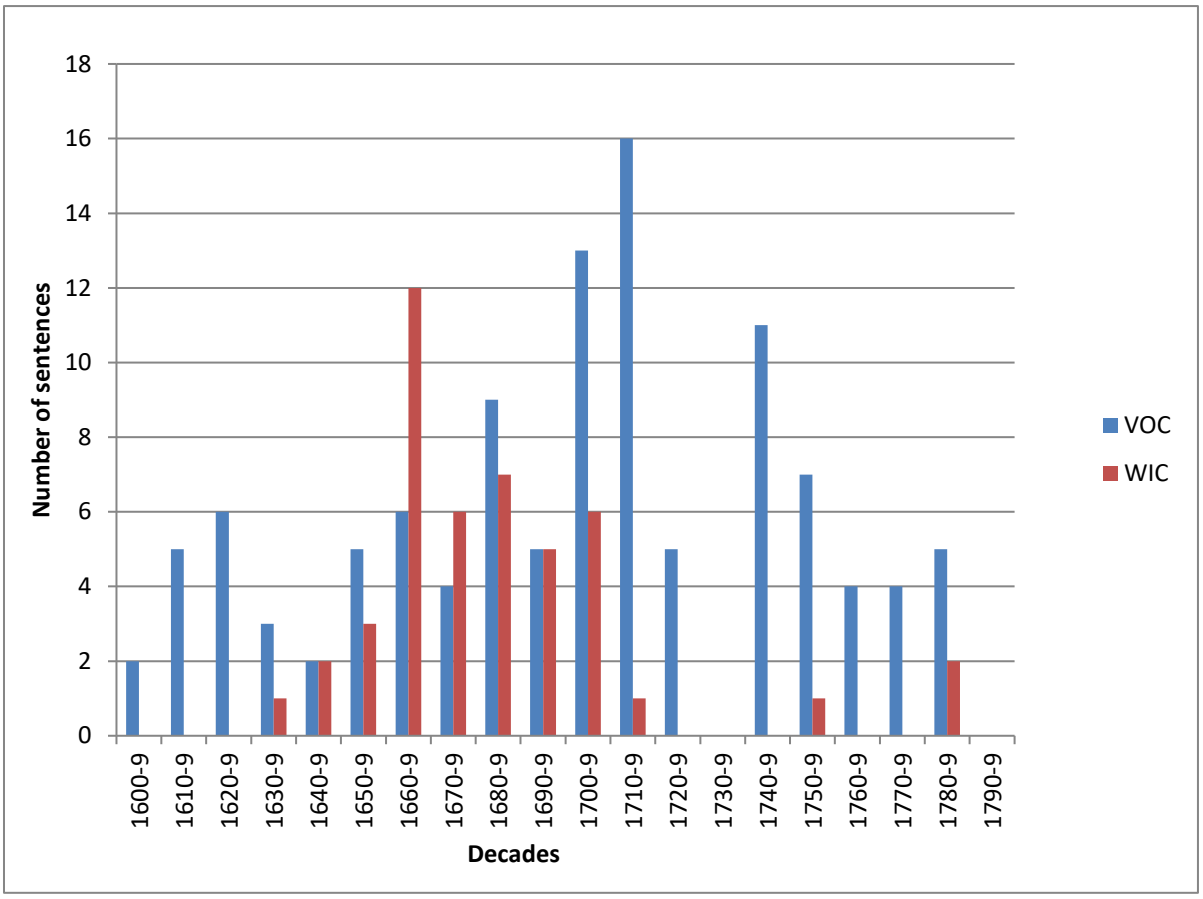
Over the almost two centuries that the Dutch East and West India Companies existed, they were named in 158 sentences in the High Court of Holland, Zeeland and West-Friesland. That each of these sentences does not represent the end point of a discrete case was first indicated by the fact that the same litigants are named in multiple sentences and confirmed by examining what each case is about. There were at least two circumstances in which multiple sentences could be passed in a single dispute. Firstly, a sentence could be passed containing the judges' decision regarding new facts, the submission of an exception, court-ordered arbitration and similar pronouncements. These decisions did not necessarily terminate a case; such a sentence was referred to as an interlocutory decision (*interlocutoire sententie*).[77] Secondly, appeal cases which were heard in the High Court could undergo revision (*revisie*) in the same court.[78] Thus there are more sentences than distinct cases. The number of cases which the companies faced numbered 106.

The sentences passed by the High Court and by specially constituted, combined benches of the Court of Holland and the High Court, were spread over the two centuries of the companies' existence. Figure 4 shows distribution of sentences in periods of a decade. The difference in number of sentences in which the two companies were named is striking. The VOC was named in far more sentences than the WIC. Specifically, the VOC was named as a party in 112 sentences (71%) while the WIC was named in 46 (29%). In addition, Figure 4 shows the clustering of sentences in certain periods. What exactly the clustering means is difficult to interpret for two reasons. Firstly, the sentences represented here do not mark the beginning of legal proceedings in the High Court, but a point during the court case or its end. Secondly, the variance in length of time that

[76] For instance, Neeltje Claes was named as a party in 2 sentences (1699, 1700, vs. VOC Chamber Amsterdam). Ida Hochepied was named in three sentences (1713, 1714, 1721, vs. VOC Gentlemen Seventeen).
[77] Defined in LeBailly and Verhas, *Hoge Raad*, 92.
[78] Ibid., 20. The authors note that for cases of revision the bench was augmented with seven legal scholars (*rechtsgeleerden*) who had not been part of the earlier deliberations on the case.

litigation took in the High Court was large: some cases were concluded in a few years, others in decades.[79] This means that estimating beginning points of cases in the High Court, let alone in lower courts, is subject to too large a margin of error to be meaningful. These are deficiencies of using the court's sentences. Further research, using the requests (*rekesten*) to pinpoint the start of cases in the High Court could be done in order to identify periods in which litigation against either of the companies was more likely. Such research could test the idea that the years leading up to charter renewals were periods of greater activity. The role of warfare and political shifts in influencing which kinds of cases arose when, could be another avenue of research to pursue. The purpose of Figure 4 here is to show that the VOC was involved in far more sentences than was the WIC.

Figure 4: Distribution of VOC and WIC sentences by decade



Source: Compiled from NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02.

When reducing the 158 sentences to discrete cases, the same pattern holds. As mentioned, I have identified 106 individual High Court cases involving the companies. The VOC was involved in 70% (74 of 106) of the cases while 30% involved the WIC (32 of

[79] For instance, the Bartolotti family received a sentence 11 years after they had first been granted permission to appeal in the High Court (Chapter 5). A far speedier case was the collective action wage case (Chapter 4) involving Carstens and de Wolff which was sentenced under two years after permission to appeal was granted.

106).[80] How can that difference be explained? Looking for answers begins with a categorisation of the cases to see what the legal disputes were actually about.

I have chosen to categorise cases by identifying one core element of the dispute and categorising the case accordingly. However, there are cases which could fall into multiple categories. To avoid double-counting, I have chosen to focus on one issue. In the detailed analyses of cases in the later chapters I make clear the complex and intertwined issues. Some cases provide tantalising details but not enough to be able to make a firm categorisation. For instance, the request submitted to the High Court to begin proceedings between Hillebrant van der Sluijs, director of the WIC Chamber of the Northern Quarter (*Noorder Quartier*), indicates that his dispute with that chamber concerned accounts for equipping and sending ships to the West Coast of Africa, of which he was in charge. But what exactly the dispute was about is unclear. It may have been about suspected fraud in the accounts. The request for legal proceedings was submitted in 1700, and the High Court passed a sentence that same year, and another the following year. But the sentences only indicate the court's decision and not what the dispute was actually about.[81] This case is one of ten (<10%) which I have been unable to categorise.[82]

The first category of cases that can be identified in the High Court records are those which dealt with entrance into the companies' monopolies. Attempts at entering the monopolies of the VOC took a different form to entering the WIC monopolies, which argument is fleshed out in Chapter 2. The VOC faced litigation from the Magellan Company which had been established by Olivier van Noort, as well as from Isaac Le Maire's Australia Company. Both of these disputes were attempts to impinge on the monopolies held by the VOC by claiming charters of their own. Together there were five sentences recorded in the two drawn-out legal disputes. While I have identified the core issue in these disputes as attempted entrance into the VOC monopolies, and would thus label both van Noort and Le Maire as serious rivals of the VOC, both cases involved numerous other issues including the seizure of ships, and breach of agreements, which are discussed in more detail in the following chapter.

Cases regarding entrance into the WIC charter area constitute the largest category of WIC cases. These cases include disputes related to contracted entrance into the charter area and recognition fees, the arrest of ships and goods allegedly from illegal private trade, and issues of legitimate prize and the rights over the goods confiscated. Altogether, these cases account for 22 of the 32 cases (69%) against the WIC. That the majority of cases involving the WIC related to such matters will not be a surprise to readers familiar with the fraught history of the WIC in the Atlantic where it struggled to enforce its monopoly charter. In terms of the litigants, the WIC cases were spread over the chambers as follows: the Chamber Amsterdam (3), Zeeland (5), Maze (4) and Northern Quarter

[80] This does however include a case which was heard by the High Court but not technically sentenced by that court, namely the case that involved Minet and the WIC. The court drew up a sentence but it was sent to the States General to be passed. See Chapter 3.

[81] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *907* (1700) Register der dictums...geresolveerd, scan 246; inv. nr. *907* (1701), Register der dictums... geresolveerd, scan 322; inv. nr. *104* (1700), Rekesten, unpaginated.

[82] There were six VOC cases and four WIC cases which eluded categorisation.

(2).[83] Noticeably, the only Chamber not involved in litigation of this kind was the Groningen Chamber, known as *Stad en Lande*.[84] The rest of the cases did not mention a chamber as the litigant. One case named the party as Jacob de Petterson, proxy (*representant*) of the Prince of Orange (the stadholder) and the rest of the directors of the WIC.[85] Since 1749, the stadholder – first William IV and then his successor William V – had been the director-general (*opperbewindhebber*) of both the VOC and the WIC.[86] The final seven cases referred only to the company directors. It is also noteworthy that the cases regarding private trade and related issues were clustered in a reasonably short time period: they were sentenced between 1659 and the 1710s. There were outliers in 1736, 1751 and 1782. Some of these disputes are analysed in the context of illegal private trade conducted by company employees (Chapter 3), while others are dealt with in the context of property rights disputes (Chapter 6) stemming from confiscation, prize and illegal trade.

The VOC was involved in disputes regarding prize too, but to a much lesser degree in the High Court than the WIC. The case discussed earlier in this chapter in which Carmichael tried to reclaim his goods seized in Ambon is one of them. The second was a resolution which the High Court passed to advise the States General in a dispute between the VOC and the English East India Company after the latter had seized a VOC ship named *De Zwarte Leeuw*.[87] Both of these cases around the confiscation of foreign ships and/or goods took place in the second decade of the seventeenth-century; similar issues do not resurface in the High Court records later in the seventeenth and eighteenth-centuries.

The High Court records contain ten cases in which private trade was a central matter in a lawsuit involving the VOC. Three of these cases involved the Chamber Amsterdam, one the Chamber Hoorn, in three no chamber was specified, and in three the Directors of the company as a whole, the Gentlemen Seventeen, were the litigants. These cases touch on a different cluster of issues to the issues with which the WIC dealt. VOC servants who had been accused of private trade, or of some other misdeeds, escaped the jurisdiction of the Batavia court and the company tried to have them extradited citing

[83] One of the sentences which I have counted as a distinct case was a case of infighting within the WIC Chamber Maze: the sentence named the parties as directors of the Chambers Delft and Rotterdam against the directors of the Chamber Dordrecht. The sentence was passed in relation to a case involving a man named Pieter Jans Boeije, and connected to a ship named *Bontekoe.* NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *897* (1660), Register der dictums...geresolveerd, scan 293.

[84] Groningen was not technically under the jurisdiction of the High Court which covered Holland and Zeeland and West-Friesland. See Introduction. The *Hoofdmannenkamer* and its 1749 successor the *Hoge Justitiekamer* functioned as an appeals court for cases whih were pursued from lower courts in Groningen, city jurisdictions and the Ommelanden. Brood and Schut, *Hoofdmannenkamer*, chapter 1.

[85] The case dealt with the division of prize taken in the Atlantic and who got what share. Nl-HaNA, Hoge Raad Holland en Zeeland, inv. nr. *864* (1782), Geextendeerde sententie, scans 31-43.

[86] Heijer, *De geoctrooieerde compagnie*, 165; Femme S. Gaastra, "The Organization of the VOC," in *The Archives of the Dutch East India Company (VOC) and the Local Institutions in Batavia (Jakarta)*, ed. G. L. Balk, et al. (Leiden: Brill, 2007), 18. Taking up the position of director-general in 1749 was part of the consolidation of power by the Oranges which was taking place at the time.

[87] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *642* (1621), Resoluties, scan 127; inv. nr. *1000* (1621), Brieven Boek, ff. 116v-118v. The EIC had captured and burnt a VOC ship for which the VOC claimed compensation, on the grounds of the 1619 agreement signed between the two companies. The High Court of Holland and Zeeland agreed to back up the VOC's claim to compensation for the loss of the ship and cargo.

ongoing or completed legal proceedings in Batavia. Private trade cases involving the VOC took the form of disputes over bills of exchange (*wisselbrieven*) when the sum to be drawn was, the company alleged, the proceeds of illegal private trade. Because the company punished its servants by withholding their wages, private trade and wage disputes could become intertwined, as happened when Jan Schull, a VOC supercargo, sued the company for confiscating his wages when it was discovered he conducted illegal private trade between Canton, the Cape and the Republic. This case is dealt with in Chapter 3, on illegal private trade.

One of the ways in which the VOC and the WIC punished their employees for conducting illegal private trade was by confiscating their wages. Thus, questions of private trade also appear in cases in Chapter 4 on wage litigation. That chapter deals with disputes between the chambers and the company men themselves, or those to whom their wages were owed. There were 29 individual sentences involving the VOC in which wages were identified as being at stake in the dispute which were connected to 17 court cases (23%). It is the largest category of cases against the VOC. In contrast, there was only one wage case pursued to the High Court against the WIC, and that was a case of collective action in which the officers and crew of a company vessel sued for their wages.[88] The lack of wage claims against the WIC is surprising given the company's reputation as a terrible employer.[89] However, over time the company leased out its monopolies, likely resulting in the company itself equipping fewer ships, and in consequence, the chambers were less likely to be the direct employers responsible for payment of wages. As shipping was devolved onto private merchants, so too was the role of wage payer.[90]

Returning to wage litigation against the VOC, I have identified 17 distinct cases, the majority of which (nine of 17) involved the Chamber Amsterdam. Zeeland was named in two cases, Delft in one and there was no chamber mentioned in three of the cases. Two of the cases included a slightly different formulation for the company as a party. A 1768 sentence named the proxy of the Prince of Orange as the party, representing the prince, Amsterdam chamber, and the other directors.[91] From 1766, Stadholder William V was the director-general (*opperbewindhebber*) of the VOC and exerted influence on the company via his proxy (*representant*), merchant banker Thomas Hope.[92] A few years later, a sentence named the VOC *hoofdofficierenfonds* as the party in a case against the widow of a VOC employee who had died indebted while in company service in Asia.[93]

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[88] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *726* (1634), scan 89-90. This case, about the sinking of the *Arnemuijden* in the Channel and subsequent collective action wage suit, is dealt with in detail in Chapter 4.

[89] The WIC was notorious for not paying its soldiers and sailors well, if at all. This is addressed in Chapter 4.

[90] Enthoven and Postma, "Introduction," 2.

[91] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *922* (1768), Register der dictums... geresolveerd, scan 173; inv. nr. *678* (1768), Resoluties, scans 187-8.

[92] Femme S. Gaastra, "Overheid en VOC," in *Roemrucht verleden. De Staten-Generaal en de VOC*, ed. Jaap R. Bruijn, et al. (Den Haag: Tweede Kamer der Staten Generaal, 2002), 36.

[93] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *922* (1771), Register der dictums...geresolveerd, scan 236; inv. nr. *679* (1771), Resoluties, scan 99. The *hoofdofficierenfonds* may have been a committee or subcommittee which dealt with wage related issues for one or all of the chambers. The judges in the High Court

Wages were likely part of disputed estates. The VOC was involved in six cases regarding inheritance matters. The WIC was involved in one case. From the court records it appears that dealing with inheritance was a matter which required legal innovation and there was much uncertainty about which laws to apply and how to settle estates when the assets as well as the heirs were spread across different locations in the Republic, and neighbouring states, as well as in Asia.

In addition to wage credit, company shares were transferable. Both VOC and WIC shares could be bought and sold, and passed on to heirs. Strikingly, disputes over ownership of shares related to inheritance, buying and selling of shares, and the company's procedure for transferring ownership only involved the VOC. The High Court records do not include any cases against the WIC on the matter of share ownership. The VOC was involved in nine cases which dealt with conflicts related to the ownership of shares in which the Chambers Amsterdam (3), Zeeland (4), and Hoorn (1) were summoned to court. The Gentlemen Seventeen were the party in the ninth case which was specifically about the payment of dividends to the King of England. In 1675 the Gentlemen Seventeen awarded William of Orange, later William III King of England, a 1/33 part of the dividends to honour him for his protection and assistance. He received dividends until his death in 1702 after which his heirs claimed the dividend. The "Councillors and Masters of the Accounts of Great Britain" were named as the party, and sued on behalf of the deceased king's heirs.[94]

Bankruptcy is an issue which arose in some cases related to shareholding as well as buying merchandise from the companies. Bankruptcy cases are discussed in the context of share disputes in Chapter 5 as well as in Chapter 6 on property rights.

Compensation claims form a small category of cases. There were seven sentences, from four separate cases, three against the VOC Chamber Amsterdam and one against the chamber Zeeland. Compensation was demanded from the chambers following damage caused by VOC ships or assistance given to a company vessel. A VOC ship sailed over the fishing nets in the North Sea which precipitated damages claims in court.[95] Similarly, the shipowners of a vessel damaged in a collision with a VOC ship also sought compensation for the damage done.[96] The third case in this category was a claim to be compensated for assistance given to a large VOC return ship (*spiegelretourschip*) in 1692. The VOC ship was richly laden, carrying cargo apparently valued at *f*2 million. The ship which had assisted the VOC return ship sank. The ship owners were awarded *f*25,000 compensation.[97]

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discussed whether or not there were legal proceedings undertaken in Batavia and the difficulty that widow Christina would have in pursuing legal action there.

[94] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *664* (1709), Resoluties, scan 210; inv. nr. *665* (1713), Resoluties, scan 152; inv. nr. *910* (1713), Register der dictums...geresolveerd, scan 278.

[95] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *818* (1726), Geextendeerde sententie, scans 22-5; inv. nr. *669* (1726), Resoluties, scan 7.

[96] The shipowners were from Hamburg, and the vessel was named *Elisabeth*. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *809* (1717), Geextendeerde sententie, scans 19-30.

[97] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *908* (1705), Register der dictums... geresolveerd, scan 288; inv. nr. *798* (1706), Geextendeerde sententie, scans 13-32. Jacob and Jan Sautijn were the litigants named. The 1705 court records reveal that the court was willing to take time over the case because of its importance.

Similarly, a privateering vessel claimed compensation from the Amsterdam Chamber of the VOC for providing an allegedly distressed East Indiaman with assistance, including protection of return ship and valuable cargo from French privateers in the Channel. The helpful privateer was Pieter de la Rue, who appears in Chapter 3.[98] Interestingly, all of these cases were sentenced by the High Court between 1705 and 1726. Wars in Europe – which pitted the Dutch Republic against France (Nine Years' War, 1688-97 and War of Spanish Succession, 1701-13) – were the backdrop of the two cases in which compensation was claimed for assisting VOC return ships.

Bills of exchange (*wisselbrieven*) were one of the financial instruments over which conflict arose involving the VOC. There were eight cases involving the VOC which dealt with bills of exchange, company debt sold off in bonds (*obligatien*), and the difference in value of certain coins between Asia and the Republic.[99] Bills of exchange were the financial instruments which company employees used to send their sometimes ill-gotten fortunes back to the Republic. The provenance of the sums sent home concerned the directors, resulting in private trade, corruption and bills of exchange disputes becoming intertwined. The WIC was involved in two cases in the High Court that had at their core financial instruments crucial to trade and exchange, namely bottomry (*bodemrij*). Both cases, sentenced in 1680 and 1690, involved the directors of the Zeeland chamber of the WIC and revolved around refusals to pay the bottomry loans on the grounds that the conditions had not been met. In one of the cases, a ship had sailed to the West Coast of Africa, taken on board slaves, sold its human cargo in Suriname and the Caribbean, and taken on board goods there to ship to the Republic. The ship did not deliver its cargo because it sank. In consequence, the bottomry holders refused to pay.[100]

Some of the kinds of disputes which the companies faced can be considered mundane commercial conflicts that were not unique to the businesses which the VOC and the WIC operated. Cases which were sparked by buying spices from the VOC were also of this sort as they revolved around payment for and delivery of goods which had been purchased. The VOC was involved in ten cases related to the buying of spices from the company: four cases involving the Chamber Amsterdam, three cases involving the Chamber Zeeland, two cases involving the Chamber Delft, and one case involving the Chamber Rotterdam. Commercial conflicts involving the WIC chambers are almost impossible to separate from issues of private trade and illegality, as mentioned above. But there were two cases which are easier to categorise as revolving around buying from and selling to the chambers. Both cases involved the Chamber Zeeland. One of them was about

[98] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *811* (1719), Geextendeerde sententie, scans 15-22. He claimed a percentage of the value of the cargo as compensation – perhaps based on maritime law principle of assistance, or a creative way of capturing VOC profit.

[99] The latter case revolved around the valuation of *realen.* On light and heavy money, and the VOC's dual use of Spanish pieces of eight, known as *realen*, see Willem Wolters, "Heavy and light money in the Netherlands Indies and the Dutch Republic: dilemmas of monetary management with unit of account systems," *Financial History Review* 15, no. 1 (2008).

[100] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *782* (1690), Geextendeerde sententie, scans 363-9; inv. nr. *660* (1690), Resoluties, scan 48. The Chamber Zeeland's opponent was Johan Godijn and associates and the ship which sank was named *de Haas.*

the sale of bedsheets to the chamber by a female merchant in Middelburg.[101] The other was about the sale of cochineal in the Republic.[102]

One of the overarching patterns that emerges from the analysis of cases by core disputes and by chamber is the complete lack of cases involving the WIC Chamber which was situated in Groningen, and referred to as *Stad en Lande*. This was the only chamber of either company which was not established in the provinces of Holland and Zeeland. As a province, Groningen was not under the jurisdiction of the High Court with the consequence that *Stad en Lande* was the only chamber outside of the court's purview.

How does this categorisation of cases help to explain the difference in number of cases faced by the chambers of the VOC and the WIC in the Republic? Why did the VOC Chambers face more than twice as many cases as the WIC Chambers did in the High Court? There are three partial explanations which stem from identifiable differences in how the companies structured trade and employment, and in the dynamism of markets for company shares. The first is that the WIC Chambers dealt with a greater number of private trade, prize and recognition fee cases in the High Court as a result of the relative ease of illegally entering Atlantic trade in breach of the WIC's monopoly, the fact that the company allowed participation in its monopoly through granting contracts for legal Atlantic trade and at various points in time the company cracked down on illegal private trade. The second partial explanation is that over time, as the WIC leased out and allowed participation in Atlantic trade, the chambers themselves were less likely to be direct employers of personnel and therefore, I suggest, less likely to be involved in wage cases than the VOC. The third partial explanation relates to the markets for each company's shares in the Republic. While the VOC Chambers faced cases from shareholders in the High Court, the WIC did not which, I propose, could be the result of different investor interests in the companies and different levels of dynamism and vibrancy in the secondary markets for company shares. These explanations are a starting point which can be fleshed out when future studies of company conflict management strategies are conducted. These could explore the possibility that the WIC avoided litigation by agreeing to settled disputes at chamber level and that in the event of litigation, the chambers were more likely to settle out of court before sentencing. In addition, whether or not the VOC faced far more cases than the WIC in other courts in the Dutch Republic is a question which can be pursued in future research.

Conclusion

Neither the VOC nor the WIC successfully managed conflict outside of the legal system in the Republic. Directors of both companies, at the level of chambers and the board of directors, were summoned to court where they faced litigation. For their part, the

[101] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *759* (1667), Geextendeerde sententie, scans 159-68.
[102] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *646* (1637), Resoluties, scan 193.

directors also summoned people to court where the parties submitted their dispute to the adjudication of the High Court.

The disputes which arose in the VOC's charter area were adjudicated within the legal system which the VOC established. Company courts across the VOC world passed sentences which could then, in theory, be appealed in the Council of Justice in Batavia which sat atop the hierarchy of company courts. From there, there was no appeal to the legal institutions in the Republic. Thus, I have argued that the VOC legal system was set up to be insulated. It did not intersect with the legal system in the Republic. The States General was the body which connected the otherwise separate legal systems. The first VOC charter offered high officials the opportunity to lodge a complaint with the States General and one such episode led to the States General directing the legal proceeding to the High Court.

The States General played a more straightforward role in connecting Atlantic jurisdictions to the legal institutions in the Republic. Cases which had been adjudicated by WIC courts could be appealed in the States General's Court of Appeal for West Indian Cases. This was not a court per se but rather a channel via which cases from the WIC charter area were sent to the High Court. The States General itself passed sentences in these cases once they had received requested advisory sentences from the High Court. The States General thus passed on the role of adjudicating and drawing up the sentence to the judges, but pronounced justice itself.[103]

The High Court records also show that the States General delegated cases to specially constituted benches which consisted of a combination of judges from the Court of Holland and the High Court. In such cases, the records were explicit as to the delegated nature of the case, opening with the statement that it was the States General which had delegated the case to be heard by the combined bench. When the States General's role in delegating WIC cases to the High Court is seen in combination with how the States General also directed VOC cases to the court, and delegated cases to specially constituted benches, it leads to the conclusion that the States General played a crucial role in determining how cases related to overseas expansion and originating outside of the courts of Holland and Zeeland made their way into the High Court.

Examining the cases which were heard by the High Court reveals the diversity of litigants. The companies faced suits from corporate and individual litigants, that is companies, groups of individuals, and individuals. Involved in these cases were men and women, subjects of the States General and foreigners. The implications of the range of litigants were two-fold. Firstly, the diversity of people who appear in High Court cases indicates that the court was a legal institution which was accessible for various people, as individuals and as groups. At one end of the spectrum were the wealthy, well-connected individuals such as Isaac Le Maire; on the other end were the widowed heirs of low-

[103] It is quite possible that this was a similar provision to the role that the States General played in offering appeal for cases which came from the courts in the Generality Lands (*Generaliteitslanden*). The Generality Lands were not provinces; rather they were areas taken from the Spanish during the Dutch Revolt by means of conquest. Israel, *The Dutch Republic: Its rise, greatness and fall, 1477-1806*, 297-300.

ranking company men. This leads to the second implication: the companies faced litigation over a range of issues, and over varying stakes.

Analysing what the cases against the companies were about revealed that the majority of WIC cases (22 of 32) dealt with issues related to illegal trade and confiscation of goods, including prize. These were matters related to the company's monopolies. The VOC too dealt with cases related to the penetrability of its monopolies – from the rival firms already mentioned, as well as the cases against employees who exceeded the limits of permitted private trade. These issues surfaced in the guise of inheritance claims, wage claims, and disputed bills of exchange.

The second striking pattern that emerged from categorising cases was that disputes over company shares in the form of litigation were peculiar to the VOC. High Court cases over shares (which are the focus of Chapter 5) involved the Chambers Amsterdam, Zeeland and Hoorn.

Neither the VOC nor the WIC succeeded in managing conflicts in-house. While the VOC was more self-contained in terms of company jurisdictions, this did not translate into resolving disputes within its own legal framework. The Chambers of the VOC, and the company directors more generally, were named in twice as many cases as the WIC directors over the seventeenth and eighteenth centuries. It is to those disputes which hit at the heart of the company's monopolies – trading within their charter areas – to which we turn in Chapter 2.

2. The companies' competitors

Conflicts over entrance into the VOC and WIC charter areas

When the Dutch East and West India Companies were founded, that they had monopoly rights over vast swathes of oceans was essential to their constitution. But the division of the oceans into two separate operational spheres, one for each company, was not a foregone conclusion, nor was its implementation uncontested. Both companies faced competitors who attempted to enter their charter areas in breach of the monopolies they held.

Surprisingly, given the vast bodies of literature on the VOC and the WIC, very little research has been conducted in the vein of commercial conflict resolution involving the companies in the Republic. Readers of company histories might be excused for thinking that apart from smuggling, illegal trade, and prize cases, the companies were not in fact involved in many conflicts relating to the granting and guarding of their monopolies in the Republic. But as the Introduction and Chapter 1 have already begun to show, the lack of attention to conflict resolution is not borne out of the nonexistence of conflicts. In this chapter I will apply the idea of conflict management to disputes which touched on the VOC and the WIC monopolies. Recently, scholars have introduced the concept of conflict management to take a wider view of dealing with commercial disputes than is usually pursued in studies of conflict resolution. As discussed in the Introduction, conflict management is conceived as a process which restrains the actions of the disputants but leaves open the possibility to continue their business.[1] That is, the underlying conflict of interest is not eradicated, but an agreed upon course of interaction is found which does not necessitate its resolution. This idea is taken up in the conflicts which are examined in this chapter, in particular the disputes which involved the VOC. The view of conflicts involving the VOC is not limited to the court cases in which it appeared, but encompasses how the same conflicts were dealt with in other arenas prior to entering the court, or in fact, instead of entering the court. The States General played a crucial role in managing conflicts involving the VOC, in which the conflict over the company monopolies was not resolved by that body but terms of engagement were settled. When these arrangements fell apart, the disputes were transferred to the court.

The disputes which follow then were not all heard in the High Court. Those that were, followed different routes into that court; none of the cases followed the trajectory of city court to provincial court and finally to the High Court, which was set out in Figure 2. Of the four disputes which were heard in the High Court, one began in that court and then underwent revision before a bench constituted by the States of Holland; another was delegated by the States General to a specially constituted bench; one bypassed the

[1] Wijffels, "Commercial quarrels," 1 (Abstract). See also Justyna Wubs-Mrozewicz's NWO-funded research project entitled 'Managing multi-level conflicts in commercial cities in northern Europe (1250-1570)' http://justynawubs-mrozewicz.blogspot.nl/ (accessed 2017-10-13).

Provincial Court when it was appealed from the Middelburg city court directly to the High Court; and the final case, which involved the Courland Company, was appealed from the Provincial Court to the High Court. This final case was inseparable from the context of numerous disputes between the WIC and Courland over the latter's incursion into trade on the West Coast of Africa. Perhaps most interesting, was the role of jurisdictional disputes embedded in these conflicts, which involved a foreign potentate, and as such made diplomacy a significant part of conflict management. Unsurprisingly, the States General interposed in some conflicts for reasons of state, overruling the jurisdiction of the Admiralty. The dispute which was heard in the High Court between the WIC and the Courland factor Henry Momber unfolded in the context of other Courland-WIC-Republic conflicts.

The first section of this chapter presents a chronology of how the VOC was created, followed by the drawn-out process of creating the WIC. In particular, the role of the States General in the creation of the companies is highlighted. That the States General wanted to create unified companies – for trade to Asia and Africa – was about more than curbing competition between existing firms. Defence and reasons of state were important considerations. This is blatantly clear in the chartering of the WIC, in which pro-war and pro-peace factions in the Republic's war against Spain and Portugal had very different ideas regarding Atlantic trade and colonisation. The processes of establishing the VOC and the WIC were fraught with tension. When the VOC and WIC each received a founding charter from the States General, the companies were granted exclusive rights over trade and navigation in the Indian Ocean, and the Atlantic and Pacific, respectively. Before moving on to consider how the companies dealt with their rivals in those charter areas, I consider the breadth of their monopolies. I demonstrate the usefulness of applying the idea of plural monopolies, which has been used for the VOC, to the WIC as well.

It is in those formative years of the VOC that the roots of disputes with rivals can be found. The VOC has been hailed as a merger of the individual firms which had competed in trade in Asia during the 1590s. These firms have come to be known as the Early Companies (*voorcompagnieën*). However, Olivier van Noort's Magellan Company was not part of that merger; perhaps unexpectedly, the Magellan Company became a tough opponent of the VOC up until the 1630s. Isaac Le Maire too had been involved in the trade with Asia prior to the creation of the VOC. His relationship with the unified VOC was fraught; he found a number of ways to retaliate against the VOC, not least in his Australia Company's successful attempt at discovering a new route to Asia. Both the Magellan Company and the Australia Company tried to constrict the VOC monopoly on the grounds of charters or permissions granted to them. The way in which conflicts between the VOC and these two companies were managed in the first decades of the seventeenth century is the focus of the second section of this chapter.

In the third section, I will highlight two conflicts which arose between the VOC and the WIC. By definition, the charter areas of the two Dutch companies did not overlap. Yet conflicts arose when one company impinged on the other's monopoly area. In both of the episodes under consideration, the States General was central to settling the disputes, which were successfully kept out of court. A reocurring theme in this chapter, which

comes to the fore in the conflicts between the VOC and the WIC, is how the political body managed conflict between the companies. The first of the conflicts between the companies arose over the VOC's settlement at the Cape and slave trading from there. The WIC's strategy in that conflict as well as others, was to incorporate what was otherwise illegal into company operations via contracts, and thus profit from it. The second episode played out almost a century later, when a WIC employee sailed in the VOC charter area in what the VOC considered a breach of its monopoly along similar lines as Isaac Le Maire's Australia Company. However, after examining the way that the Australia Company court case had gone, the VOC intentionally kept the dispute with the WIC employee, Jacob Roggeveen, out of court.

Unlike the VOC, which tried to keep competitors out, the WIC let competitors into its charter area under certain conditions, stipulated in contracts. The WIC's strategy of incorporating illegality and legalising it through contracts is the topic of the final section. Two cases that arose out of contracted entrance into the company's monopoly are examined, the first involving merchants from the Dutch Republic, and the second a foreign trading company. The parties disputed whether or not the terms of the contracts had been breached, and the consequences thereof.

This chapter shows that when it came to their monopolies, the VOC and the WIC had different strategies for dealing with their competitors. While the VOC succeeded in eliminating competing firms by the 1630s, the WIC incorporated rival merchants through granting contracted entrance into the company's charter area. This strategy applied to the VOC when that company infringed on the WIC's charter area. The WIC thus profited from licensing out trade as well as conducting company trade. Conflict management is a useful concept when considering the disputes that arose between the companies and their competitors because of the encompassing view that it stipulates. The States General played a crucial role in mediating and settling disputes between rivals. Sometimes this meant that disputes did not enter the court; in other instances settlements did not last long and formal legal proceedings began between the parties. The companies and their competitors used the political and legal institutions of the Dutch Republic in managing monopoly-related conflicts.

Chartering companies in the Republic

This first section explores the way in which the States General worked towards the unification of multiple firms active in branches of trade and drew the power to grant monopoly charters for trade from the city and provincial authorities to itself. The States General succeeded in uniting the firms for long-distance trade with Asia, thereby chartering the United Dutch East India Company, the VOC. During the 1610s, the States General tried to merge the companies trading on the West Coast of Africa, but did not succeed in overcoming the opposition from the Amsterdam companies.[2] It is likely that it was those same Amsterdam Guinea companies which opposed the chartering of the WIC,

[2] Deursen, Smit, and Roelevink, *Resolutiën*, I:247 [1412]; 1754-1415 [1129]; 1793-1414 [1324]; 1800 [1356].

which faced opposition from other quarters too. Eventually, some three decades after the idea of a single company for Atlantic trade and colonisation was first proposed, the States General granted a charter to the West India Company.

The VOC and the WIC were constituted by charters (*octrooien*) and then maintained by renewal. These charters were part of the system of monopolies and patents issued by the States General over inventions and new discoveries, including 'discoveries' of new sea routes and lands. As G. Doorman noted, monopolies were sometimes used to promote friends but in other instances were issued with the express purpose of benefitting the common good.[3] The States General was by no means the only body which issued charters – Karel Davids contends that we should consider patent systems in the plural, pointing out that towns, cities and provinces issued patents and charters too, creating multiple patent systems.[4] This was certainly the case for the early seventeenth century when the early firms trading with Asia operated under charters issued by cities or provinces.[5] It was by virture of their sovereign power, maintained in the Union of Utrecht (1579), that provinces issued monopoly charters. But on matters of foregin policy and defence – for which the VOC and the WIC were in no small part intended – and for interprovincial enterprises, it was the States General that was the competent body.[6] In the course of the late sixteenth and early seventeenth century, the States General was drawing the power of granting charters for monopoly companies to itself.

A difficult merger: the VOC

During the late 1500s, in the context of war against Spain and Portugal, a number of firms were set up for voyages to Asia to trade in spices which would otherwise have come onto the market via the Iberian Peninsula. Historians have debated the impetus behind the equipping of those first voyages – to what extent the embargoes by Kings Philip II and III of Spain on Dutch ships in Iberian harbours forced the Dutch to sail east themselves – it is clear that they took place in a period when long-distance trade was expanding.[7] In a picture dominated by the VOC, these firms have acquired the teleological label of *voorcompagnieën*, that is, the firms which preceded the VOC.

Within a few years, the States General succeeded in altering the structure of trade from multiple firms based in different cities to a single, unified company with chambers based in those same cities. The firms based in the Republic competed with one another in the same goods, from the same places, which competition the States General considered

[3] G. Doorman, *Octrooien voor uitvindingen in de Nederlanden uit de 16e-18e eeuw met bespeking van enkele onderwerpen uit de geschiedenis der techniek* ('s-Gravenhage: Martinus Nijhoff, 1940), 9-10.

[4] Karel Davids, *The Rise and Decline of Dutch Technological Leadership: Technology, economy and culture in the Netherlands, 1350-1800*, 2 vols. (Leiden: Brill, 2008).

[5] The First United East India Company Amsterdam operated with a monopoly charter granted by the city of Amsterdam. Dillen, *Aandeelhoudersregister*, 13-14.

[6] Albert C. Meijer, "'Liefhebbers des vaderlandts ende beminders van de commercie'. De plannen tot oprichting van een Generale Westindische Compagnie gedurende de jaren 1606-1609," *Archief. Mededelingen van het Koninklijk Zeeuwsch Genootschap der Westenschappen* (1986): 23. The provinces had given over some competences to the States General, namely on issues relating to foreign policy and defence.

[7] Gaastra, *The Dutch East India Company*, 13; Heijer, *De geoctrooieerde compagnie*, 34.

detrimental to the trade. Competition betweeen merchants drove prices up in Asia and the increased supply to the Republic drove prices down in the market there.[8] Efforts to unify the firms at that point came to nothing.[9] But over the following years city-based and provincial cooperation grew. Over time Amsterdam-based firms united and merged, eventually forming the First United East India Company, Amsterdam, in 1600, with a monopoly charter granted by the city.[10] In the same year the United Zeeland Company was formed out of the burgomaster of Middelburg's firm – the eponymous Compagnie ten Haeff – and Balthasar de Moucheron's associates from his Compagnie van Veere, also known as Compagnie de Moucheron. De Moucheron himself however was not involved in the combined Zeeland undertaking.[11]

Moving from regionally-based cooperation to a united company required overcoming opposition from the United Amsterdam Company, tensions between Holland and Zeeland, and from Balthasar de Moucheron. The United Amsterdam Company recognised the need for a single body to administer trade with Asia, but as the heir of the first of the firms in that trade, the Far Lands Company (*Compagnie van Verre*), the merchants claimed that their company should be that single administrative body, and requested a monopoly charter on trade and navigation east of the Cape of Good Hope for 25 years valid in Holland and West Friesland. This would have secured a very favourable and powerful position for Amsterdam, which was exactly what the other cities of Holland represented in the States of Holland wanted to curtail. Thus, the majority of the States of Holland stressed the need to reorganise the trade for the common good.[12]

It was likely the same fear of Amsterdam pre-eminence that fuelled the tensions between Holland and Zeeland. Gaastra points to the pressure exerted on the Zeelanders from various quarters, including Prince Maurits, which was needed to induce them to cooperate in the plan for a supra-provincial, unified, company.[13] The Zeelanders, however, were not themselves a unified front. There were tensions between the three cities in which firms were based – Veere, Vlissingen and Middelburg – over the influence each would have within the single Zeeland Chamber.[14] How Balthasar de Moucheron fitted into this picture of diverging interests is not entirely clear. De Moucheron had been one of the foremost supporters of and investors in finding a route to Asia via the north, and was involved in trade not only to Asia, but also on the West Coast of Africa, North Africa, Italy, and with north and south America.[15] He did not take part in the United Zeeland Company

[8] Gaastra, *The Dutch East India Company*, 19-20.
[9] Dillen, *Aandeelhoudersregister*, 12-13. This argument is fleshed out in an unpublished paper I co-authored with my colleague, Erik Odegard. Kate Ekama and Erik Odegard, "Multiple Geographies: The spatial organization of Dutch trade activity between the Dutch Republic and the Atlantic and Indian Oceans, c. 1590-1650," in *European Social Science History Conference* (Vienna, Austria: Unpublished conference paper, 2014).
[10] Gaastra, *The Dutch East India Company*, 20, 29-31.
[11] Dillen, *Aandeelhoudersregister*, 5-11.
[12] Ibid., 14-15.
[13] Gaastra, *The Dutch East India Company*, 20.
[14] Ibid., 31.
[15] A. Prinsen, *Balthazar de Moucheron voorloper van de VOC* (Middelburg: Stichting VOC publicaties, 1987), 6-9. See also the very detailed account of de Moucheron's involvement in trade in J. H. de Stoppelaar, *Balthasar de*

when it was formed in 1600; it was that year when he requested a monopoly charter of his own from the States General, to secure his place in Indian Ocean trade. Specifically, he sought monopoly rights over trade on the east coast of Africa but the States General refused him.[16] According to Gaastra, it was financial difficulty around 1600 which prevented de Moucheron from participating in the VOC in 1602. Confusingly, however, Gaastra also notes that de Moucheron was named among the 13 founding directors of the Zeeland Chamber and only gave up his seat the following year, in 1603.[17]

After the States General's initial, failed attempts at amalgamating the firms in 1598, the idea arose in 1600 with more urgency in light of the recent chartering of the English East India Company.[18] While Gaastra describes the charter negotiations as 'lengthy' and 'difficult', the united company received its founding charter in March 1602.[19] That charter was more than purely a monopoly granted for a specific duration of time; it was the founding document of the new company in which the company was granted public law competencies.[20] From its incorporation, the VOC had a hybrid character: the company was at once an extension of the States General's foreign policy, in the war against Spain and Portugal while simultaneously the VOC was a privately financed trading company.[21]

As one of the sticking points, Gelderblom *et al* point to the necessity that "all merchants active in the Asian trade needed to join if the new concern's monopoly was to work."[22] All merchants were not included; Olivier van Noort's Magellan Company was not part of the merger. In fact, the charter issued to the VOC in 1602 included a provision that his Magellan Company could continue its operations based on the charter which it had received in the 1590s. This had serious implications for the VOC's monopoly and activities in the early years of the company's existence. So too did the activities of Isaac Le Maire, one time director of the VOC, who emerged as a rival of that company in the early decades of its existence. Both van Noort and Le Maire feature later in this chapter, in long-running conflicts with the VOC.

Moucheron. Een bladzijde uit de Nederlandsche handelsgeschiedenis tijdens den tachtigjarigen oorlog (den Haag: Martinus Nijhoff, 1901), esp. Chs 10-25.

[16] Stoppelaar, *Balthasar de Moucheron*, 179.

[17] Gaastra, *The Dutch East India Company*, 29, 31.

[18] Gelderblom, Jong, and Jonker, "An Admiralty for Asia," 38.

[19] Gaastra, *The Dutch East India Company*, 31.

[20] Jongh, "Tussen *societas* en *universitas*," 63-64.

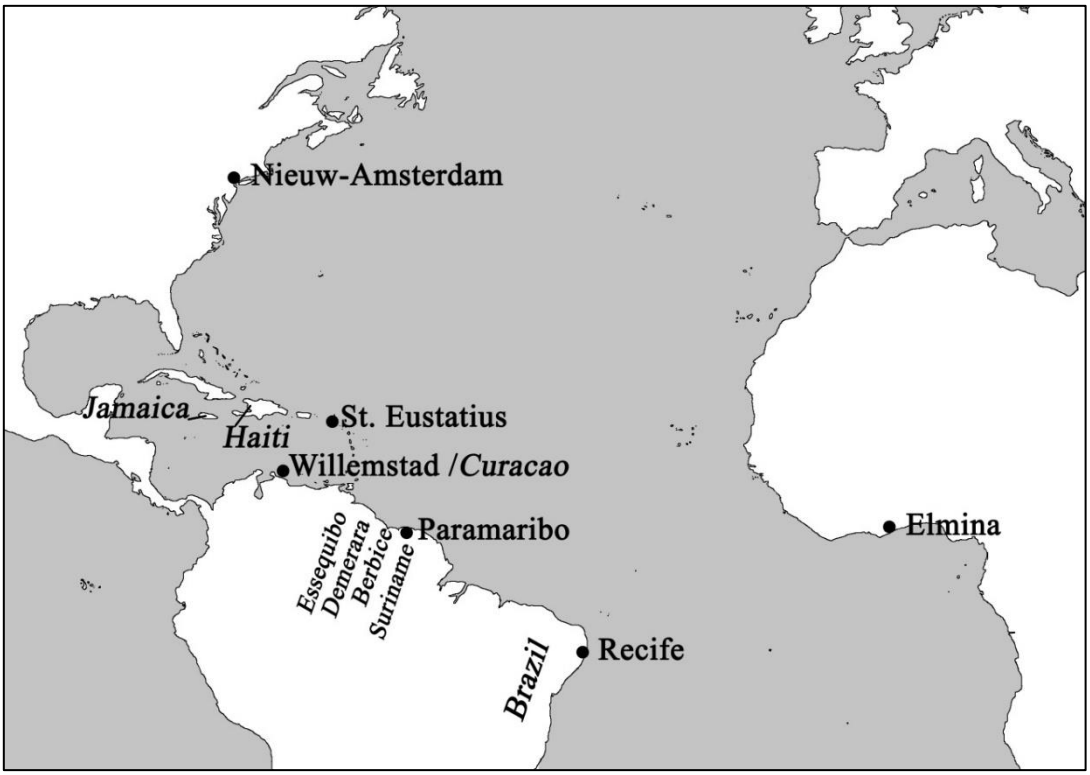
[21] Matthijs de Jongh has argued that the VOC and the WIC both had this hybdrid character. Ibid., 126.

[22] Gaastra, *The Dutch East India Company*, 20. Quote: Gelderblom, Jong, and Jonker, "An Admiralty for Asia," 38-39.

Figure 5: Map of the VOC's charter area

Source: NL-HaNA, Kaarten Leupe, toegang nummer 4.VEL, inventaris nummer *312*

Figure 6: Map of the northern Atlantic, showing part of the WIC charter area



Map courtesy of Erik Odegard. Odegard, 2016.

Figure 7: Seventeenth century map of the world

Map of the World, Jan de Visscher, after Nicolaes Pietersz Berchem, c. 1670 - c. 1680. Rijksmuseum, Amsterdam.

Chartering the WIC

While the idea to create a single, monopoly company for the Atlantic arose earlier than proposals to unify the Asia traders, creating the West India Company took much longer than chartering the VOC. Opposition arose during the negotiations over the scope of the proposed monopoly, over the core business, and the influence that the States General would have on running the Company. Rivalries between cities and between provinces hampered progress towards chartering a company. War with Spain and Portugal was a significant issue in the creation of the WIC not only in disagreements over the role of the company in the conflict and decision-making power in war, but also because of the delay that the Twelve Years Truce (1609-1621) caused in negotiations. There were clearly disagreements between pro-war and pro-peace factions over the shape a West India company should take.

Willem Usselincx first proposed the idea of creating a chartered monopoly company for trade in the Atlantic in the 1590s, a time when long-distance trade from the Republic was flourishing. Due to "insufficient support", it took a number of years before the idea was taken up by the States of Holland, in 1606.[23] During the course of 1606 and into 1607 the plan to create a West India Company gained impetus, driven forward by the efforts of High Court judge Francois Francken (also Vranck). Francken's dedication to creating a West India Company has led Albert Meijer to reassess the role of Willem Usselincx, such was the importance of the judge in the 1606-7 period.[24] The States of Holland submitted a draft charter – based on the VOC's 1602 charter – to the States General which body circulated the draft among the provinces for consultation. Disagreements between stakeholders were discussed and negotiated. The beginnings of peace negotiations with Spain in 1607, which would lead to the signing of the Twelve Years Truce in 1609, halted the process and plans for a West India Company were put aside as a condition of peace. The idea was resurrected in 1614, and again in 1617, but it was only from 1618 onwards that negotiations again intensified, culminating in the June 1621 chartering of the West India Company.[25]

Albert Meijer argues that the period from 1606-7 was foundational in the creation of the company. The issues which hampered negotiations in that phase, arose again in later years. One of the issues which hindered the negotiations in 1606 was rivalry between the cities in Zeeland. Middelburg dominated the other cities – Vlissingen and Veere – in the VOC Chamber Zeeland, a situation which Vlissingen and Veere wanted to avoid repeating. The cities could not agree on how to divide directors' seats and the equipping of ships between themselves. These were still points of discord in later negotiations, and even continued after the company was chartered in 1621. As Meijer

[23] Henk den Heijer, "The Dutch West India Company, 1621-1791," in *Riches from Atlantic commerce: Dutch transatlantic trade and shipping, 1585-1817*, ed. Victor Enthoven and Johannes Postma (Leiden: Brill, 2003), 78.
[24] Meijer, "'Liefhebbers des vaderlandts'," 41, 46. Franken was dedicated to the destruction of the Spanish, whether by the Republic's efforts or France's. According to Meijer, he agreed to move to France to oversee the creation of French West India Company should WIC plans stall in the Dutch Republic. Francken died before the company was chartered. See http://resources.huygens.knaw.nl/repertoriumambtsdragersambtenaren1428-1861/app/personen/5756 (accessed 2018-07-04).
[25] Bick, "Governing the Free Sea," 98-99; Meijer, "'Liefhebbers des vaderlandts'," 30-45.

points out, city-level rivalry hampered plans but did not thwart the company's formation.[26]

Also in 1606-1607, there were protests from West Friesian cities Hoorn and Enkhuizen regarding the scope of the monopoly – in order to protect their own trade, they wanted to keep salt shipping out of the planned company's monopoly. Cities in Holland and Zeeland which were part of the negotiations in October 1606 were in favour of including the salt trade in the monopoly of the proposed company. Making the company attractive to investors was a reason to include the salt trade in the new company. The States General sent Francken and two other men to Hoorn to discuss the matter with the burgomaster of that city. The commission made concessions to the Hoorn salt traders to which Zeeland later objected. The Zeelanders claimed that they had been leaders in the salt trade, having 'discovered' the salt pans and shown the Hollanders the route, but Franken's concessions around division of shipbuilding and equipping ships for the salt trade disadvantaged Zeeland in the trade. When negotiations reopened in later years, the salt trade continued to be a sticking point in the company's formation.[27]

Meijer suggests that in contrast to the VOC, the WIC was set up almost from scratch.[28] This view perhaps too easily sweeps aside the numerous firms and companies which were active in Atlantic trade by 1620. Around the turn of the century, Victor Enthoven notes, there were already eight firms trading on the West Coast of Africa, in gold and ivory.[29] During the truce, the merchants trading on the West Coast of Africa faced attacks from the Portuguese which threatened their trade. Between 1610 and 1612 they made numerous requests to the States General for assistance from the Admiralties. On the back of rising defence costs, the States General tried to induce the firms to merge and form a united company for the trade. The impetus behind the merger attempts was that a united company could be expected to cover costs of its own protection.[30] The delegation of the responsibility of defense takes on greater significance when the role of violence in the VOC and later the WIC is considered. The Guinea Companies were, after all, embroiled in the hostilities between the Republic and Spain and Portugal. In 1610 negotiations between Guinea firm representatives from cities in Holland and Zeeland got as far as a draft charter. Two of the firms, both Amsterdam-based, refused to accept it and so the plan was scuppered.[31] But the States General did not give up on the merger idea: motivated by their view that it was necessary for the prosperity of the Republic and the trade in Guinea, the States General tried to merge the companies in 1612. Again, the Amsterdam companies obstructed the attempted merger, ostensibly following the advice

[26] City rivalry was not resolved in 1621; directors from other chambers came in as arbiters to resolve the dispute after the charter was issued. Meijer, "'Liefhebbers des vaderlandts'," 37, 45.
[27] Ibid., 37-39, 43.
[28] Ibid., 46-47.
[29] Enthoven, "An assessment of Dutch Transatlantic commerce, 1585-1817," 425. M. R. Doortmont and J. Smit, *Sources for the Mutual History of Ghana and the Netherlands: An annotated guide to the Dutch archives relating to Ghana and West Africa in the Nationaal Archief, 1593-1960s* (Leiden: Brill, 2007).
[30] Simon van Brakel, *De Hollandsche handelscompagnieën der zeventiende eeuw. Hun ontstaan - hunne inrichting* (Den Haag: Martinus Nijhoff, 1908), 27.
[31] Deursen, Smit, and Roelevink, *Resolutiën*, I:247 [1412].

of the Amsterdam magistrate.[32] Simon van Brakel accounts for their unwillingness to merge thus: the Amsterdam firms were the most powerful of those trading in Guinea and they could manage the situation there – presumably referring to covering the costs of competition and attacks by the Portuguese – so that merging would only benefit 'the weaker brothers'.[33]

According to Victor Enthoven, a Guinea company was established in 1614 but no mention of it is made in the States General resolutions, indicating that it likely received a city or provincial charter.[34] Furthermore, the fact that the resolutions still mention Guinea companies – plural – in July 1615, clarifies that the 1614 company was not the merger the States General had tried to create.[35]

In 1614 merchants from Holland started up WIC negotiations again. The result of this was a version of the 1606 charter amended by Johan van Oldenbarnevelt to increase the power of the States General by giving it the power to appoint a board member for the company, leaving the business of the company in the hands of merchants. Van Oldenbarnevelt was, however, of the pro-peace faction and thus concerned with not offending Spain and Portugal during the truce years. Soon after, Willem Usselincx penned a competing draft in which he proposed a dual structure for the company directorship which would keep matters of trade and state separate, controlled by chief shareholders and a Council for the Indies respectively. Importantly, Usselincx was of a different political bent to van Oldenbarnevelt: he envisaged an important role for Maurits of Nassau, not the States General, and his plan included the option for foreign princes to buy high office in the company, and in that way support the war against Spain and Portugal.[36] These two charters set out fundamentally different views of the relationship between the company and the state regarding the role of the States General in the company, and the creation of the company in keeping peace or making war with Spain and Portugal.

It is possible that Usselincx's charter was the outcome of meetings in The Hague which had been organised after a group of merchants made a request to the States General in July 1614 to create a company for trade with the West Indies, the coast of Africa, and through the Magellan Strait. It is specifically mentioned in the resolution that the company would not endanger the interests of the VOC, nor cause any break in the truce with Spain and Portugal which was still ongoing. Consultations were planned in The Hague which included influential figures Willem Usselincx and Nicasius Kien.[37]

Another company established that year was the New Netherland Company. It was formed when the four firms involved in trade on the east coast of North America decided

[32] Ibid., I:754-755 [1129]; 1793-1124 [1324]; 1800 [1356].
[33] Brakel, *De Hollandsche handelscompagnieën*, 27.
[34] Enthoven, "Early Dutch expansion in the Atlantic region, 1585-1621," 43.
[35] Deursen, Smit, and Roelevink, *Resolutiën*, II:468 [537].
[36] Bick, "Governing the Free Sea," 98-105. Bick comments on the importance of religious division too. Foreign princes would have the opportunity to support the Protestant Republic in its war against Catholic Spain and Portugal.
[37] Deursen, Smit, and Roelevink, *Resolutiën*, II:284 [590] and n. 234. Nicasius Kien was involved in the exploration and trade in the north and that same year, 1614, was instrumental in founding the Noordse Compagnie. On the Noordse Compagnie see Louwrens Hacquebord, *De Noordse Compagnie (1614-1642). Opkomst, bloei en ondergang* (Zutphen: Walburg Pers, 2014).

to merge in order to take advantage of the States General's offer of monopoly charters for new discoveries made in the General Patent.[38] They approached the States General to request a monopoly, as noted in the resolutions of the States General from 11 October 1614. The New Netherland Company was to receive a charter for four voyages, valid for three years beginning 1 January 1615.[39]

The Noordsche Compagnie too was formed in 1614. Initiative for the whaling company came from Hollanders and later a Zeeland 'chamber' was added. Particularly significant from the point of the chartering of the WIC, was the fact that both Groningen and Friesland were left out of the Noordsche Compangnie. This was salt in the wounds of the Frisians who had been excluded from the VOC in 1602. Exclusion fuelled the desire of both Frisians and Groningers to participate in the planned WIC. The two northerly maritime provinces worked hard at negotiating their way into the WIC when negotiations gathered pace and impetus in 1617, and from 1618 onwards.[40]

With the attempted merger of the Guinea companies having failed, but the fur trade now under a monopoly New Netherland Company, trade in the Atlantic was still characterised by multiple firms which operated in specific branches of trade, with a degree of regional specialization.[41] Plans for a single company for the Atlantic were picked up again in 1617 when the States General formed a special commission to deal with the matter of creating a West India Company. The commission favoured Usselincx's proposal and the powerful role that it suggested for the States General, Prince of Orange and noblemen in the management of the company. However, the States of Holland blocked the progress of this charter, supporting instead van Oldenbarnevelt and his commitment to peace. The power balance between the factions shifted following the political upheaval of 1618, and in particular van Oldenbarnevelt's execution. Over the coming months there were a number of amendments made to the shape of the proposed company: the extent of the States General's power on the board of directors was circumscribed; and the States General's financial contribution to the company would make it a shareholder. Despite opposition from Holland, including Amsterdam merchants trading with Guinea who wanted to limit the monopoly to the Americas to protect their interests in Africa[42], plans progressed and a final draft was produced in October 1620.[43] That draft included the provision that cities or provinces which invested *f*100,000 could appoint a director in a chamber of their choosing. For their part, Groningen and Friesland were granted a

[38] Van Cleaf Bachman, *Peltries or Plantations: The economic policies of the Dutch West India Company in New Netherland, 1623-1639* (Baltimore: The Johns Hopkins Press, 1969), 3-9. Jaap Jacobs, *New Netherland: A Dutch colony in seventeenth-century America* (Leiden: Brill, 2005), Ch 1, esp 34. Jacobs notes that some of the men involved in the newly formed New Netherland Company had experience working together as they were participants in the Northern Company.

[39] Deursen, Smit, and Roelevink, *Resolutiën*, II:337 [861].

[40] P. J. van Winter, *De Westindische Compagnie ter kamer Stad en Lande* (Den Haag: Martinus Nijhoff, 1978), Chapter 1.

[41] Ekama and Odegard, "Multiple Geographies," 11-15.

[42] It is quite possible that these Amsterdam merchants were in fact the individuals involved in the Guinea Company created in 1614.

[43] This paragraph is based on Bick, "Governing the Free Sea," 105-109. Quote, 107.

chamber, provided they could raise *f*0.5 million investment.[44] The charter was approved by the States General on 3 June 1621, almost thirty years after Usselincx had first proposed the idea.[45]

Over the following two years, the newly chartered company struggled to raise the capital needed to begin its operations, perhaps as a result of the ructions between the VOC and its shareholders at that time (discussed in Chapter 5).[46] Groningen struggled but succeeded in gathering subscriptions but Friesland did not, with the result that the latter was left by the wayside. Friesland's longed-for involvement in the WIC did not materialise, resulting in "longstanding rancour" against the company.[47]

During that period, the traders who had formed the New Netherland Company in 1614, and then split again after their charter expired in 1618, continued their operations within the WIC's charter area until 1623.[48] What exactly happened to the New Netherland traders, and to the Guinea firms, in the early years of the WIC is unclear. Henk den Heijer states that they were dissolved; Victor Enthoven contends that they were absorbed into the WIC. According to Jaap Jacobs some New Netherland traders sold their ships to the WIC on the coast of North America while in *patria* some directors of the New Netherland Company became directors of the WIC.[49] The shift from multiple firms to a single West India Company belies the continuity in the structure of trade.

Company monopolies

Monopolies stood at the centre of the VOC and the WIC charters. In the early 1970s, Sinnappah Arasaratnam argued that the VOC constituted what he called a "many-sided monopoly system."[50] His short article set out the contours of debate over what were essentially diverging colonial visions: there were advocates of free trade and of continued monopoly policy within the upper echelons of company officials. Chris Nierstrasz has developed these ideas and convincingly argues that the VOC should really be considered as having comprised plural monopolies. There were three monopolies which the company acquired by different means. Firstly, the Dutch monopoly was granted by the States General, first in 1602 and renewed over time, and gave the VOC exclusive rights over trade

[44] Winter, *Stad en Lande*, 5-6.
[45] Heijer, *De geschiedenis van de WIC*, 28.
[46] Ibid., 33. The WIC was by no means alone in its financial struggle. The Portuguese East India Company required four years before sufficient subscriptions had been collected in order for the company to be incorporated. José Engrácia Antunes and Nuno Pinherio Torres, "The Portuguese East India Company," in *VOC 1602-2002: 400 Years of company law*, ed. Ella Gepken-Jager, Gerard van Solinge, and Levinus Timmerman (Deventer: Kluwer legal publishers, 2005), 166-182.
[47] Winter, *Stad en Lande*, 7-10. Quote 10. In 1622 all directors appointed in the chamber were in fact from Groningen.
[48] Bachman, *Peltries or Plantations*, 15. Brakel, *De Hollandsche handelscompagnieën*, 31. Bachman is the only author to call Dutch Atlantic companies which preceded the WIC '*voorcompagnieën*' which is the term exclusively reserved for reference to the companies trading in Asia before the VOC.
[49] Heijer, *De geschiedenis van de WIC*, 69. The Dutch word that den Heijer uses is *ontbinding.* Enthoven, "Early Dutch expansion in the Atlantic region, 1585-1621," 44. Jacobs, *New Netherland*, 37.
[50] S. Arasaratnam, "Monopoly and Free Trade in Dutch-Asian Commercial Policy: Debate and controversy within the VOC," *Journal of Southeast Asian Studies* 4, no. 1 (1973): 1.

with Asia from the Republic. The second monopoly, also granted by the States General, excluded all others from the Dutch Republic from intra-Asian trade. The third monopoly was over certain goods, in particular a number of spices, which the VOC acquired through bloody conflict and conquest in the early seventeenth century and which remained contingent on the VOC's capacity to enforce contracts with Asian sovereigns and exclude rivals. As Nierstrasz correctly concludes, the VOC's control of trade was at no point complete.[51]

Nierstrasz's research elucidates the ways in which the VOC devolved some of its monopolies to its servants. After the 1740s, the VOC opened parts of the intra-Asian trade to its employees which Nierstrasz argues was more about company policy than weakness in enforcement of a strict monopoly. This marks a departure from the enduring supposition that private trade was a manifestation of corruption among company employees and its endurance resulted from VOC weakness in imposing limits on those employees. Furthermore, it requires historians to nuance the argument that the VOC and English East India Company (EIC) differed so markedly in the allowances granted to their servants for private trade. It was exactly this strategy – allowing company servants to trade for their own accounts – which Emily Erikson points to in explaining the success of the EIC in Asia, and which Santhi Heejebu argues made company employees more loyal to the company rather than less.[52]

Within the ranks of both the VOC and the WIC there were long-running debates between advocates of monopoly policy and free trade. Arthur Weststeijn has shown that the VOC's monopoly policy was by no means uncontested. There were strident voices within the company as well as without which opposed the VOC monopoly: Pieter van Dam, Pieter de la Court and Pieter van Hoorn argued in favour of colonisation and free trade, and against the company's monopoly policy.[53]

Within the WIC, advocates of private trade and of monopoly were divided particularly sharply along provincial lines. During the 1630s, Amsterdam and Zeeland directors disagreed over opening trade with Dutch Brazil: while Zeeland supported monopoly, Amsterdam was in favour of opening trade. After vacillating between conditional openings of the company monopoly and then reversals, in 1638 the States General decided to open the monopoly. After the loss of Dutch Brazil in 1654, conflicts along provincial lines continued to arise over the question of free trade. By the 1720s, the provinces' positions were reversed – then Amsterdam defended the remnants of the WIC monopoly while the Zeelanders were in favour of free trade.[54] As historians have

[51] Chris Nierstrasz, *In the Shadow of the Company: The Dutch East India Company and its servants in the period of its decline, 1740-1796.* (Leiden: Brill, 2012), 73-75.
[52] Emily Erikson, *Between Monopoly and Free Trade: The English East India Company, 1600-1757* (Princeton and Oxford: Princeton University Press, 2014), 1-3. Santhi Hejeebu, "Contract enforcement in the English East India Company," *The Journal of Economic History* 65, no. 2 (2005).
[53] Weststeijn, "The VOC as Company-State."
[54] Henk den Heijer, "A public and private Dutch West India interest," in *Dutch Atlantic Connections, 1680-1800: Linking empires, bridging borders*, ed. Gert Oostindie and Jessica Vance Roitman (Leiden and Boston: Brill, 2014), 166-174.

observed, the WIC monopoly was whittled away over time, both from inside the company as well as by outsiders.[55]

The High Court cases which are discussed in this chapter and Chapter 3 have a bearing on the way in which we understand the VOC and WIC monopolies. Both companies had to defend their monopolies against intrusions, and did so in court. But at the same time, both companies allowed entrance into their monopolies in different ways: the WIC essentially leased out its monopolies to private traders via contracts, while the VOC allowed recognition trade of a more circumscribed kind. Unlike in Atlantic trade, the VOC infrastructure – ships, routes – were crucial to the recognition trade undertaken by private merchants.[56] The crucial point to make here is that while both the VOC and the WIC were granted monopolies, neither company operated as a strict monopoly. Both faced competition from foreign rivals, as well as from subjects of the States General at certain points in time, and both companies allowed private trade within their monopoly charter areas but to very different degrees. The differences that emerge out of the conflicts which are the subject of the following sections, is that while the VOC tried to keep its competitors out of its charter area, and succeeded in the first decades of the seventeenth century, the WIC structurally permitted private trade in its charter area under certain conditions. The VOC did not offer contracted entrance into its charter area like the WIC did.

Constricting the VOC charter area

Two groups of merchants who had formed companies on the basis of permissions granted in charters from the States General took the VOC to court over issues which related to the latter company's monopoly over trade and navigation east of the Cape of Good Hope. Not only do the cases open a window onto the kind of men who opposed the VOC, but they also show the ways in which they did that. Olivier van Noort tried to maintain the charter he had been granted before the creation of the VOC while Isaac Le Maire tried to skirt around the articles of the VOC monopoly and get a charter of his own which constricted the VOC's area. The States General played an important role in mediating the relationship between the disputants but the conflicts were later transferred to the courts. Clearly neither van Noort nor Le Maire was against monopolies in principle but each man responded to the way in which the VOC's monopolies limited his opportunities.[57] Both Olivier van Noort's Magellan Company and Isaac Le Maire's Australia Company should be considered as VOC competitors. Their opposition to the VOC's monopoly was not based

[55] See Enthoven and Postma, "Introduction," 2. For a concise overview of the WIC's loss of monopolies and the tensions between Holland and Zeeland within the company, see Heijer, "The Dutch West India Company," 77-112.

[56] In general the VOC guarded its Dutch monopoly jealously, but did in fact allow recognition trade to the Republic in certain goods. Chris Nierstrasz, *Rivalry for Trade in Tea and Textiles: The English and Dutch East India Companies (1700-1800)* (Basingstoke: Palgrave Macmillan, 2015), 26-30, esp. 28. WIC contracts for trade within the charter area are discussed later in this chapter, as well as in Chapter 3.

[57] A famous case took place in England in the 1680s, when Thomas Sandy opposed the East India Company on the grounds that monopolies were illegal. Stern, *The Company State*, 46-60.

on principled opposition to monopolies per se, but stemmed from their own designs on long-distance trade with Asia.

The one that got away? Olivier van Noort's Magellan Company

Rights granted by charter, fine spices, and company agents were at the centre of a long-drawn out dispute between Olivier van Noort's Magellan Company and the Dutch East India Company. For close to three decades the two companies were engaged in a difficult relationship. Initially, the States General set the terms on which the companies related, that is, the underlying conflict between the companies was managed by the States General. However, the conflict between the companies continued and eventually, with the permission of the States General, entered the legal system at the level of the High Court, where a case was heard in first instance. The conflict can be traced back to the late 1590s.

Unlike the majority of the *voorcompagnieën* which sailed to Asia via the Cape of Good Hope, there were two enterprises in the late 1590s which planned to reach the spice islands of the Moluccas by sailing across the Atlantic, through the Strait of Magellan and then across the north Pacific. Confusingly, each has been referred to as the Magellan Company in twentieth-century scholarship. The first was the Compagnie van der Hagen-van der Veken.[58] Both Pieter van der Hagen and associate Johan van der Veken originated from the Southern Netherlands and had established themselves in Rotterdam. Beyond trade with Asia, they had both been involved in trading with the Spanish-Portuguese colonies in Africa and America, and van der Veken was involved in Baltic trade and in herring fisheries.[59] Van der Veken in particular was a man of influence and importance in both political and commercial circles. He cultivated ties with the Rotterdam city government, had connections in the States General and States of Holland, to Oldenbarnevelt with whom he had a "close relationship", and the crowns of England and of France.[60] On 23 December 1597 the Compagnie van der Hagen-van der Veken received concessions from the States General for two return expeditions to the spice islands. The fleet which sailed the following year, under fellow Southern Netherlanders Admiral Jacques de Mahu and Vice-Admiral Simon de Cordes, has become well-known for the disastrous outcome – most of the crew was lost, as well as the majority of the *f*500,000 of invested capital.[61] Johan van der Veken, neither ruined nor put off long-distance trade by

[58] Gaastra refers to it as the Magellan Company or Rotterdam Company. Gaastra, *The Dutch East India Company*, 17-23, esp. 19 (Table 11).

[59] P. C. Molhuysen, P. J. Blok, and Fr. K. H. Kossman, eds., *Nieuw Nederlands Biografisch Woordenboek*, 10 vols. (Leiden: A. W. Sijthoff, 1911-37), X, 1081-1083. Roelof Bijlsma, "Het bedrijf van de Magellaensche Compagnie," *Rotterdamsch Jaarboek* (1917): 26. In his inaugural lecture, Kernkamp recounts van der Veken's overseas trade endeavours and the business partners with whom the voyages were undertaken. See J. H. Kernkamp, *Johan van der Veken en zijn tijd* ('s-Gravenhage: Martinus Nijhoff), Published inaugural lecture, 14-23.

[60] Molhuysen, Blok, and Kossman, *NNBW*, X, 1081-1083. He was a financer of the Republic and van Oldenbarnevelt's personal banker. Noortje de Roy van Zuydewijn, *Van koopman tot icoon. Johan van der Veken en de Zuid-Nederlandse immigranten in Rotterdam rond 1600* (Amsterdam: Prometheus/Bert Bakker, 2002), 276.

[61] N. Japikse and H. H. P. Rijperman, eds., *Resolutiën der Staten-Generaal, 1576-1609*, 14 vols. (Den Haag: Martinus Nijhoff, 1915-1970), IX:681 [354]. Bijlsma, "Het bedrijf," 26-27.

the disastrous endeavour, became a director of the VOC chamber Rotterdam in 1602. He held the position until his death in 1616, when he was counted among the weathiest men in the city.[62]

The second company set up in Rotterdam followed a very different trajectory. In the late 1590s, Olivier van Noort (Figure 8) set up a Rotterdam-based trading company called the 'Company of the Captain-General Olivier van Noort of the Magellan Strait'.[63] On 24 December 1597 van Noort was granted the same concessions as the States General had granted van der Hagen and van der Veken the previous day. That entailed assistance from the Admiralties for one journey and exemption from convoy fees for two return journeys to the 'East Indies' via the Strait of Magellan.[64] Unlike van der Hagen and van der Veken, who had strong ties to immigrants from the Southern Netherlands, van Noort was backed by Hollanders who invested in his company. Directors of van Noort's Magellan Company included Pieter van Beveren who was soon to become the mintmaster-general of Holland, and Jan Jacobsz Huydecooper, of the Amsterdam city council (*vroedschap*). Investments also came from generations of a Rotterdam family. Gerrit Huygensz was a merchant and herring shipowner (*reder*), and he held the position of alderman (*schepen*) in the city of Rotterdam. He invested *f*5000 to become major shareholder (*hoofd-participant*); his son Huych Gerrytsz van der Buys invested *f*4330 to become a director (*bewindhebber*); and van der Buys's children also invested in the company.[65] From Amsterdam, the Coeckebacker brothers, Claes Jacobsz and Jan Benninck, were involved in van Noort's company. Following the pattern of the Far Lands Company (*Compagnie van Verre*), Magellan Company crew members invested two month's wages in the company. Van Noort himself made a considerable investment. Together, the company's capital amounted to some *f*200,000 in *f*1000 parts.[66]

The fleet, which was equipped in Amsterdam and Rotterdam, consisted of two ships and two yachts (*jachten*) with a crew numbering close to 250. Olivier van Noort himself was the Admiral of the fleet, aboard the *Mauritius*, with his associate Jacob Claesz in charge of the Vice-Admiral ship *Fredrik Hendrik*. Jacob Jansz Huydecooper, son of the Amsterdam director Huydecooper, was captain aboard the yacht named *De Hoop*. Unlike the Company van der Hagen-van der Veken, van Noort's intention to sail via the Magellan Strait was no secret – he planned to sail via the Strait to trade on the West Coast of South America, and from there proceed to the spice-producing islands of Southeast Asia. When it came to equipping the fleet, the dangers of sailing through the Magellan Strait scared off a number of prospective sailors so that van Noort had to make do with an inexperienced

[62] Molhuysen, Blok, and Kossman, *NNBW*, X, 1081-1083. Zuydewijn, *Van koopman tot icoon*, 276. In chapter 8 van Zuydewijn traces Johan van der Veken's twentieth-century transformation from obscure merchant to iconic Rotterdam entrepreneur. Archivist Wiersum's research began the process which was completed in the 1990s when the city of Rotterdam decided to bestow the Johan van der Veken award on citizens who had, like van der Veken, made an outstanding contribution to the flourishing of the city.

[63] I refer to the company van Noort as the Magellan Company, which follows Bijlsma's usage. According to him, the company was referred to as the Magellan Company from 1603. Bijlsma, "Het bedrijf," 28, 29.

[64] Japikse and Rijperman, *Resolutiën*, IX:681-682 [355].They had requested permission for six journeys free of fees but were granted two return trips.

[65] Bijlsma, "Het bedrijf," 28, 29.

[66] Ibid., 28-31.

and motley crew. Van Noort's fleet set sail soon after the fleet of the Compagnie van der Hagen-van der Veken, in mid-1598.[67]

Over the course of the van Noort Company's three-year voyage numerous crew members died, one of the yachts had to be abandoned and the *Fredrik Hendrik* was separated from the fleet and assumed lost. Despite the setbacks, van Noort himself was the first Dutchman to circumnavigate the globe, surviving Atlantic, Pacific and Indian Ocean crossings to return to Rotterdam in late August 1601. During the journey van Noort and company succeeded in conducting trade in spices in archipelagic Southeast Asia as well as taking prize off the coast of Chile, both of which activities the company was sanctioned to undertake. The charter granted van Noort's Magellan Company by the States General gave van Noort permission to conduct trade, while he and his fleet were sanctioned to do as much damage to the Portuguese and Spanish as possible in the fleet's *artikelbrief* which was signed by Prince Maurits.[68] The expedition was not a financial success.[69]

Unperturbed, the directors of the Magellan Company opposed the chartering of a united Dutch East India Company during negotiations to form such a company in the early years of the seventeenth century. Roelof Bijlsma states that "the monopolisation of navigation to the East Indies met with resistance from the side of the directors of the Magellan Company, who continued to insist on the maintenance of their rights."[70] The directors of the Magellan Company manifest their opposition in a remonstrance submitted to the States General in February 1602, by which time negotiations for the merger were already quite advanced. It was based on the argument that they had been granted rights already. In 1597 van Noort had been granted exemption from convoy fees by the States General. He argued that it was for four journeys - the Rotterdam participants and the Amsterdam participants had each been granted this concession for two return journeys.[71] The States General resolved on the issue in March, days after the VOC charter had been signed: the Magellan traders would continue to enjoy the concession granted to them, that is the 1597 concessions, for a limited period of time.[72] This was specified in Article 34 of the VOC's charter which started to set out the vast area which would fall under the VOC monopoly. No one, other than the Company, being the VOC, would be allowed to sail from the Dutch Republic east of the Cape of Good Hope or through the Strait of Magellan during the period of 21 years, beginning in 1602, with the exception that concessions given to companies to sail through the Magellan Strait remained in their

[67] Ibid., 27-28.
[68] Ibid., 31.
[69] Ibid., 34. Van Noort did succeed in taking some ships prize en route. However, these did not bring in much valuable loot. One Spanish ship taken prize had gold on board, but the captain of the vessel threw it overboard, presumably to keep it out of van Noort's hands! On prizes, see ibid., 32-33.
[70] Original: "*de monopoliseering van de vaart naar O.-Indië ontmoette verzet van de zijde van de bewindhebbers der Magelhaensche Compagnie, die op handhaving hunner rechten bleven aandringen*." Ibid., 35.
[71] Ibid.
[72] Japikse and Rijperman, *Resolutiën*, XII:298 [293].

entirety on condition that they will send their ships from the Dutch Republic within four years, on pain of losing their concession.[73]

Whether van Noort's remonstrance was written from a position of weakness or strength is not clear. Was it a desperate attempt from someone already excluded and trying to salvage a future in trading? Or was it a significant obstacle put in the way of the proponents of a unified company? The outcome of the VOC charter negotiations and formation of the company was that the politically and commercially powerful van der Veken became a director of the Rotterdam chamber, while van Noort did not. The latter's Magellan Company continued to exist after the creation of the VOC in March 1602, with protection of its concessions for a limited period of time. The fact that van Noort's rights previously granted were recognised and upheld would indicate that his arguments were taken seriously. But why did the States General allow the continued existence of the Magellan Company? Bijlsma has suggested that van Noort's Magellan Company was allowed to maintain its concessions because it was not considered a serious competitor of the VOC: "Evidently people did not consider the competition of the Magellan Company of enough import to also win this party over to the charter."[74] But allowing the continuation of van Noort's Magellan Company does not quite line up with the States General's efforts to pressure the Zeelanders into a merger at the same time. By upholding the Magellan Company's concessions, the States General left a gaping hole in the VOC's monopoly. Was this a victory for van Noort as a man of influence and reputation himself? In 1602, van Noort took up a high-ranking office in the Anglo-Dutch fleet which sailed against the Portuguese, as part of the war against Spain and Portugal.[75] It is clear that van Noort would not have objected to the proposed VOC's military side. The reason for his exclusion should be sought elsewhere. It is possible that van Noort's exclusion from the VOC was a matter of finances – that he did not have the necessary sum to invest in order to gain a seat among the directors. Perhaps it was the influential van der Veken who managed to exclude van Noort's associates from the negotiations in order to advance his own interests at a city level. Van der Veken's clout may be part of the explanation as to why the Magellan Company was left out, but does not explain why the States General upheld van Noort's concessions.

Revoking the Magellan Company's 1597 concessions may well have been seen as undermining the legitimacy of the States General. And on what grounds could they base such a decision? Whether desired or not, van Noort was not numbered among the directors of the VOC when it was established in 1602. Instead, his Magellan Company continued to exist, which would prove to be a thorn in the side of the VOC over the following decades.

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[73] Article 34 in Witteveen, *Een onderneming*, 94. A problem in interpreting the charter article is the use of the plural. This may be explained by the fact that the Magellan Company had 'branches' in Amsterdam and Rotterdam.

[74] Original: "*Blijkbaar heeft men de concurrentie der Mg. Cie. niet van genoeg beteekenis geacht, om ook deze partij nog voor het octrooi te winnen*." Bijlsma, "Het bedrijf," 35.

[75] Molhuysen, Blok, and Kossman, *NNBW*, VIII:1229. He was the deputy to the commander of the Dutch ships. After the expedition, he was captain in the Dutch army.

Figure 8: Portrait of Olivier van Noort.

Crispijn van de Passe (I), Portrait of the admiraal Olivier van Noort, 1601. Rijksmuseum, Amsterdam.

The States General: Managing the companies' conflicts

The relationship between the VOC and the Magellan Company was based on the charters of the two companies – the concessions granted to van Noort and associates in 1597 and the provision for their continuation in the VOC charter of 1602. The relationship between the two companies was to change dramatically in 1603 when news brought from Asia radically altered the Magellan Company's prospects. The States General set the terms of engagement between the two companies in 1603, which bolstered the VOC's claims to exclusivity in its charter area but at the same time allowed the Magellan Company to continue its trade within the VOC's monopolies.

After they had successfully navigated the Magellan Strait, in 1600 the vice-admiral ship *Fredrik Hendrik* became separated from the rest of the Magellan Company fleet along the coast of Chile and was written off as lost. However, the *Fredrik Hendrik* had in fact successfully sailed across the Pacific, and reached the island of Ternate. There, company agent Bartholomeus de Graeff closed an agreement with the Sultan: de Graeff sold the ordnance and ammunition on board, as well as the body of the vessel itself, to the Sultan in return for cloves.[76] The yacht *Het Duyfken* arrived in the Republic in February 1603 with news of the *Fredrik Hendrik*'s arrival in Ternate. It was closely followed by *De Enckhuyzen* which carried some of the surviving crew who confirmed the news. In light of the trade agreement made, the Magellan Company directors announced that they were readying a fleet to sail to Ternate.[77]

The VOC objected to the Magellan Company's plans, apparently claiming that it was a breach of the VOC's charter.[78] The matter was taken to the States General. The States General commissioned mediators to bring the parties to a settlement. The States General had earlier resolved that if the dispute could not be settled via mediation between the two sides's representatives, then it would be concluded with finality by the States General.[79] Because mediation came to naught, the States General made a decision on 7 October 1603 in which they set out the new terms of the relationship between the companies and settled the disputes between them. The first point made by the States General was that the Magellan Company had to renounce its charter and concessions.

> So it is that we have declared and declare hereby, that the aforementioned Magellan Company will renounce the aforementioned charter and concession granted and that the same will be considered invalid and

[76] Bijlsma, "Het bedrijf," 35-37.
[77] Ibid., 36-37.
[78] Pieter van Dam, *Beschrijvinge van de Oostindische Compagnie*, 8 vols. (Den Haag: Martinus Nijhoff, 1927-54), I.i:10. According to my understanding, it was not a breach of the VOC's charter because of the provision made for the Magellan Company in Article 34. Furthermore, the time limit put on the concessions had not yet expired. Perhaps the VOC made some argument regarding what its monopoly covered – sea routes and/or products and/or trade.
[79] The three men were van Oldenbarnevelt, Magnus and van der As. Japikse and Rijperman, *Resolutiën*, XII:629 [319, 320] and n. 625.

> without effect, such that based on its power no claim could be made on trade through the aforementioned strait or otherwise.[80]

The Magellan Company acquiesced, leaving it in the position of having principals in the Republic and agents in Ternate with no legal means to connect them or ship cloves. The second issue dealt with was exactly that connection – VOC ships would transport the Magellan Company's agents (*commiezen*) and spices. The continued existence of the Magellan Company had undermined the VOC's monopoly in a serious way but the new terms of the companies' relationship as set out by the States General moved the VOC into a stronger position. The Magellan Company was reduced to an on-shore trading company with no possibilities to expand its trade, or exploit new opportunities. Its trade agreement with the Sultan of Ternate was upheld but a time limit of five years was placed on it. For five years the VOC would transport Magellan Company personnel and products to and from Ternate. According to the States General's terms, the VOC had to transport two agents to Ternate on behalf of the Magellan Company and later bring all the company's agents back, treating them as if they were their own employees, providing board and lodging without cost. Regarding cloves, the States General decided that VOC could not trade in spices on Ternate until the company's obligation to the Magellan Company had been fulfilled – that is, only once the Magellan Company's clove consignment had been fulfilled could VOC agents trade in spices on the island.[81] This decision precluded competition between the companies' agents in Ternate by prioritising the Magellan Company's trade.

In some ways this resolution protected the VOC's monopoly – no others were allowed to send ships into its charter area as specified in 1602. But to prioritise the Magellan Company's trade undermined the VOC – the Magellan Company's trade agreement was protected from and indeed fulfilled by the VOC as a shipping company. Following this agreement, the VOC fleet under Admiral Steven van der Hagen brought the Magellan Company's first shipment of cloves to the Dutch Republic.[82]

Going to court, c. 1610-1635

The States General's Resolution of 1603 did not bring animosity between the companies to an end. In fact, conflict between them escalated. Firstly, the companies did not adhere to the States General's terms of engagement. In particular, the VOC refused to transport Magellan Company personnel and letters. The VOC suspected that the Magellan Company letters contained anti-VOC sentiments, while the Magellan Company complained that the VOC was opening and reading their correspondence before handing it over to the directors. It is not clear when exactly this started but resolutions of the States General

[80] Original: "*Soo ist, dat wy...verklaart hebben en verklaren by desen, dat de voorsch. Magellanische Compagnie sal afstant doen van den voorsch. octroye ende concessie... verleent ende dat deselve sullen gehouden sijn...kragteloos en sonder eenigh effect, sulcx dat uyt kraghte van dien geen vaart door de voorsch. Strate ofte andersints en sal mogen werden gepretendeert.*" Dam, *Beschrijvinge*, I.1:13.

[81] Ibid., I.i:13-14.

[82] Bijlsma, "Het bedrijf," 39.

between 1613 and 1616 indicate that the dispute had already been going a number of years, with the two companies petitioning the States General.[83]

Secondly, the companies disagreed on the proper arena to resolve their dispute. The Magellan Company wanted the States General to continue mediating their dispute, because, the company claimed, the States General understood the reasons why the Magellan Company had relinquished its concessions in 1603.[84] The VOC on the other hand wanted the dispute heard in the courts. Initially, the States General had also resisted handing the dispute to the courts, favouring a quicker way to deal with the dispute than litigation. Eventually both the States General and the Magellan Company acquiesced. As the VOC had wished, the dispute was put before the High Court.[85]

The case between the VOC and the Magellan Company was not delegated to the court by the States General; it was heard by the High Court following the ordinary procedure of justice. This too was in line with the VOC's wishes.[86] The reference to ordinary procedure in this context likely means that the High Court would pass a sentence, not the States General. In the delegated cases discussed in Chapter 1, the High Court wrote a sentence but sent it back to the States General to be passed. In first instance, the case between the Magellan Company and the VOC was initiated by the directors of the Magellan Company against the directors of the VOC. A sentence was passed by the High Court in 1620.[87] The High Court's sentence then underwent revision, which required the bench be enlarged with legal scholars who had not previously heard the case.[88] This bench pronounced their verdict in 1623.[89] In 1624 the Magellan Company requested that the States General have some of the judges removed from the case due to conflicts of interest. The Magellan Company believed that four judges were themselves or were related to investors in the VOC. While the States General agreed in principle that judges with a vested interest should be distanced from the case, they decided that the High Court should deal with the request. This was specifically due to the fact that the case had not been delegated to the court but followed the ordinary procedure. Therefore, the States General decided, it would not interfere.[90] Unexpectedly, the sentence passed by the High Court on 20 January 1623 already included the names of three of the four Court of Holland judges whom the Magellan Company wanted as replacements for those with a vested interest in the outcome of the case. The conclusion of the sentence lists Reijnier van Persijn, Johan Oem van Wijngaerden and Abraham van der Meer amongst the judges who heard the case. Their fellow Court of Holland judge Willem Baersdorp was named alongside them as was

[83] Deursen, Smit, and Roelevink, *Resolutiën*, II: 170 [953], 182 [135], 231 [285], 250 [405], 252-173 [418], 638-179 [411], 718 [801], 740 [924].
[84] Ibid., II: 170 [953]. NL-HaNA, VOC, 1.04.02, inv. no. *11120*. Dossier: VOC vs. Magellan Company, unpaginated.
[85] Ibid., II:170 [953]; 250 [405].
[86] Ibid., II: 170 [953].
[87] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. no. *887* (1620), Register der dictums...geresolveerd.
[88] LeBailly and Verhas, *Hoge Raad*, 93.
[89] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. no. *935* (1623), Register der dictums... gepronuncieerd.
[90] Deursen, Smit, and Roelevink, *Resolutiën*, VII:64 [368]; 364 n. 368e.

Leiden law professor Cornelis Swanenburch. Gilles de Glarges, Pensionary of Haarlem, and Cornelius Smoutius, secretary of Rotterdam, brought the bench to seven.[91]

The dispute between the two companies limped on. In 1627 the High Court passed another sentence, in *rau actie*, indicating first instance, which was initiated by the Magellan Company against the VOC. In this sentence, pronounced on 4 March 1627, the judges are referred to as those "delegated" by the States of Holland. This is significant for two reasons. Firstly, it is clear that the bench which heard the case was not the normal bench of either the provincial court or the High Court; rather it consisted of men who were given the task specifically. Secondly, and following from this, it was the States of Holland in whose name they pronounced their judgment, not the States General or High Government as was sometimes referenced in other cases. The judges named in the 1627 sentence numbered seven in total, four from the Court of Holland and the remaining three from the High Court.[92] Unlike the sentence passed in 1623, there was not a law professor specifically named among them. *Meester* Couwenburch (Pieter Couwenburch van Beloys), whom the Magellan Company requested replace one of the judges in 1624, was amongst the provincial court judges named in the 1627 sentence. The only man who was on the bench in both the 1623 and 1627 sentences was Johan Oem van Wijngaerden.[93]

The sentence passed in the case in first instance between the Magellan Company and the VOC underwent revision initiated by VOC, in 1627/8. The case was sentenced on 14 July 1628 by a bench of seven judges. Amongst them were Reijnier van Persijn, Gilles de Glarges, and Professor Cornelis Swanenburch to whom the dispute between the companies was familiar as a result of their earlier involvement.[94] Some five years later, on 16 December 1633, the last sentence was passed by the delegated judges, in the name of the States of Holland. It was specifically stated that the 1633 sentence dealt with the execution of the first sentence in the case, dated 4 March 1627.[95] Thus we can conclude that the 1627 case which underwent revision in 1628 was continued in the High Court and finally sentenced in 1633. It concerned the payment, as set out in the first sentence, which the VOC was legally bound to make to the Magellan Company. Detailed accounts of the purchase and value of cloves, deductions made on the VOC's debt and the payment of toll to the Sultan of Ternate were presented to the court and sentences set out the payments which should be made between the companies.

By 1633 the Magellan Company was in a state of liquidation. Over the following two years the Magellan Company was wound up and a final dividend paid out. Dividends of around 20% were paid to investors twice, in 1607 and 1613. The final payment of 85% was paid out to the heirs of the initial investors in the Magellan Company in 1635.[96]

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[91] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. no. *935* (1623), Register der dictums... gepronuncieerd.
[92] NL-HaNA, VOC, 1.04.02, inv. no. *11121* unpaginated. Sentence pronounced 4 March 1627.
[93] NL-HaNA, VOC, 1.04.02, inv. no. *11121* unpaginated. Sentence pronounced 4 March 1627. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. no. *935* (1623), Register der dictums... gepronuncieerd.
[94] NL-HaNA, VOC, 1.04.02, inv. no. *11121* unpaginated. Sentence pronounced 14 July 1628.
[95] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. no. *937* (1633), Register der dictums... gepronuncieerd.
[96] Bijlsma, "Het bedrijf," 42, 44.

The persistence of the Magellan Company reshapes the traditional view of the VOC as a merger of all the companies trading in Asia which was granted a watertight monopoly. The VOC was a merger of some of those companies, and was granted a monopoly within which there was provision for the Magellan Company to continue exploiting its pre-existing concessions. However, the VOC and the States General became aware of just how detrimental that was to the VOC's monopoly. The States General effectively constricted the VOC's monopoly in the early years by instructing the company to fulfil the role of transporter of cloves and clerks so that the Magellan Company could continue to trade in accordance with its agreement with the Sultan of Ternate, which would otherwise have constituted a major breach of the VOC's monopoly. Simultaneously, the Magellan Company was hamstrung: it was not allowed to send ships into the VOC's charter area any longer. In litigation, the Magellan Company pursued the same strategy as it had before the VOC was created, that is, enforcing terms of pre-existing agreements. Over the course of three decades van Noort's Magellan Company engaged with the VOC via the political and legal institutions of the Dutch Republic in which the company attempted to protect the charter it had been granted and enforce the terms of the relationship between itself and the VOC regarding shipment of cloves and transportation of company agents between the Republic and Ternate. The conflict was managed by the States General, but was transferred to the High Court, following the VOC's agitation to have the court resolve the dispute. The Magellan Company was eventually wound up in 1635 and no longer constricted the VOC's monopoly.

'Discovering' a route to circumvent the VOC: Isaac Le Maire's Australia Company

Isaac Le Maire, a merchant of Flemish origin, did not oppose the formation of the VOC as van Noort had done in the early seventeenth century. Le Maire was a director of the New Brabant company, set up in 1599, which then joined with the Old Company to form the First United East India Company, Amsterdam with a monopoly charter from the city. By virtue of his involvement in the *voorcompagnieën*, he received a directorship in the VOC when it was established in 1602, in the Amsterdam chamber.[97] He was also the largest investor in the company, putting *f*85.000 into the Amsterdam chamber.[98] His relationship with the company turned sour very quickly. In 1605 he was forced out of the VOC by his fellow directors. They suspected Le Maire of falsifying accounts for equipping ships in the fleet of 1604. Furthermore, they thought he was in contact with the French King Henry IV about starting a rival French company. Because of this he was forced to resign his position as a director.[99] Perhaps still smarting from the exclusion, in 1609 he publicised his

[97] Gaastra, *The Dutch East India Company*, 19, 29-31. The New Brabant Company (also Brabant Company or New Company) sent a fleet of four ships to Asia in 1599 under the command of Pieter Both. The ships returned in 1601.

[98] Heijer, *De geoctrooieerde compagnie*, 59.

[99] Witteveen, *Een onderneming*, 64. On his dealings with Henry IV of France see also W. A. Engelbrecht and P. J. van Herwerden, eds., *De ontdekkingsreis van Jacob le Maire en Willem Cornelisz. Schouten in de jaren 1615-1617. Journalen, documenten en andere bescheiden*, 2 vols., Werken uitgegeven door de Linschoten-vereeniging ('s-Gravenhage: Martinus Nijhoff, 1945), II: Chapter 1.

criticisms of the company and was involved in speculating with VOC shares, which plummeted in value as a result.[100] But Le Maire's attempts at constricting the VOC's monopoly began in earnest in 1614.

Isaac Le Maire was not opposed to monopolies in principle, as is evident from his attempts to gain monopoly charters from the States General for himself. He was seeking ways to constrict the VOC monopoly, to carve out an area for his own company. Jaap Bruijn goes a step further: "From 1610 onwards some businessmen in Holland, not belonging to the Company, were eager to defy the monopoly of 1602."[101] Similarly, Roelof van Gelder comments that Le Maire held a grudge against the VOC and was set on breaking the company's monopoly.[102] According to Bruijn, the VOC's response was to send Joris van Spilbergen and his fleet out across the Atlantic in 1614 to show that the company could cover its whole charter area. However, this did not stop Le Maire and his associates from Hoorn from continuing with their plans.[103] Isaac Le Maire's son Jacob (Figure 9) set sail in 1615, with Willem Schouten, in what was a serious test of the limits of the VOC.[104] Their expedition had multiple aims: firstly, to find an alternative route to Asia, not through the Magellan Strait or around the Cape of Good Hope which were mentioned in the VOC's 1602 charter; secondly, the search for the southern continent (*Zuidland* or *Terra Australis*); and thirdly, to conduct trade in areas where the VOC had not established itself.[105]

The longest-lasting result of the expedition was the discovery of a route into the Pacific south of the Magellan Strait, which they named Le Maire Strait. This course included rounding the point which they named Cape Horn.[106] The voyage was to have shorter-term consequences too, which had serious implications for the VOC monopoly, as well as the WIC monopoly which had yet to be granted but which was under discussion.

Jacob Le Maire and Willem Schouten sailed through the newly discovered strait, across the Pacific and reached Jayakarta where they received a hostile reception from the VOC. Governor-General Jan Pietersz Coen declared them in breach of the VOC's monopoly; their ship, the *Eendracht*, was seized as were the ships papers, and the crew sent home on the VOC's return fleet. Van Gelder points out that protesting Coen's decision did not make

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[100] Gelderblom, Jong, and Jonker, "An Admiralty for Asia," 30. Heijer, *De geoctrooieerde compagnie*, 99.

[101] Jaap Bruijn, "The Dutch role in charting the Pacific," in *Kapitaal, ondernemerschap en beleid. Studies over economie en politiek in Nederland, Europa en Azië van 1500 tot heden*, ed. C.A. Davids, W. Fritschy, and L.A. van der Valk (Amsterdam: NEHA, 1996), 429.

[102] Roelof van Gelder, *Naar het aards paradijs. Het rusteloze leven van Jacob Roggeveen ontdekker van Paaseiland, 1659-1729* (Amsterdam: Uitgeverij Balans, 2012), 20.

[103] In addition to Isaac Le Maire, the named directors of the Australia Company were Pieter Clemensz. Kies, brewer and former burgomaster of Hoorn; Jan Clemensz. Kies, secretary; Jan Kansz. Molenwerf, alderman of Hoorn; and Cornelis Segertsz. who lived in Hoorn. It was clearly an undertaking based in Hoorn. Engelbrecht and Herwerden, *De ontdekkingsreis van Jacob le Maire en Willem Cornelisz. Schouten*, II: 34.

[104] Bruijn, "The Dutch role," 429-430.

[105] Gelder, *Naar het aards paradijs*, 20; Engelbrecht and Herwerden, *De ontdekkingsreis van Jacob le Maire en Willem Cornelisz. Schouten*, 44. Engelbrecht and Herwerden note the specific instruction to the Australia Company men that, if they did not succeed in establishing new trade connections in Terra Australis, they should get permission from the VOC authorities to trade in areas under the company.

[106] F. W. Stapel, *De Oostindische Compagnie en Australië* (Amsterdam: P. N. van Kampen & Zoon, 1937), 72; Bruijn, "The Dutch role," 429-430.

a difference; complaints had to be directed to the Gentlemen Seventeen in the Republic.[107] After Schouten's and the crew's return, Isaac Le Maire did indeed make his complaints known. He claimed compensation for the seizure of the ship in court, in the Republic. Moreover, he petitioned the States General for ten year rights to publish the voyage journal and prevent Willem Jansz (later Blaeu) from doing so.[108] At the same time, whether or not Jacob Le Maire and Willem Schouten had indeed broken the VOC monopoly was under consideration. Lastly, the implications of their discovery of Le Maire Strait, also occupied the States General, in light of ideas to charter a West India Company.

In July 1617, Isaac Le Maire and his associates requested compensation from the VOC. They asked the States General to ensure that the VOC directors pay three times the damages and interest resulting from firstly, the seizure of the *Eendracht* in Jayakarta, secondly, consulting the ship's papers, and thirdly, the death of the general (presumably, Admiral of the ship) and trade of his goods.[109] In March of the following year, 1618, the States General delegated the case between the VOC and the Australia Company to a specially constituted bench which consisted of four judges from the High Court and three from the Court of Holland, with the stipulation that none had interests in either company.[110] According to Dirk Jan Barreveld, the judges were supposed to adjudicate the question of compensation payable to the Australia Company, not whether or not the Australia Company had broken into the VOC monopoly.[111] In April 1622 the bench pronounced their decision, and awarded the Australia Company compensation.[112]

Barreveld indicates that at the same time the bench presented a non-binding opinion on the question of whether or not the Australia Company had broken the VOC

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[107] Gelder, *Naar het aards paradijs*, 21.

[108] The ship's papers were a contentious issue. Herman de la Fontaine Verwey recounts the tussle between Le Maire and Jansz over the papers. He suggests that Jansz received the papers from the VOC. But neither the States General nor the States of Holland were in favour of the information being published by Jansz. The States General favoured secrecy in order to protect the VOC monopoly; in contrast, the States of Holland and Johan van Oldenbarnevelt with them, were anti-VOC Amsterdam, which manifest in pro-Australia Company feeling. The States of Holland supported the Australia Company's rights to publish; Jansz's attempts to publish an account of the voyage were viewed as breach of copyright. The States of Holland relented in 1618 and allowed Jansz to publish maps. He circumvented the the ban on publishing the account by calling it Schouten's journal, that is, by omitting any reference to Jacob Le Maire. In that same year van Oldenbarnevelt was arrested: one of the allegations against him was directly related to the dispute between the VOC and the Australia Company. It was alleged that he had tried to break the monopoly of the VOC by supporting the Australia Company. From that point to accusations of treason was a conveniently small step: if the VOC was weakened by the Australia Company, it would make it harder for the VOC to succeed in military operations in the Indian Ocean, so supporting the Australia Company was tantamount to aiding the Portuguese. Interestingly, Verwey notes that in 1617 and 1618 Schouten was trying to get his papers back from the VOC. He succeeded in 1618, the same year he signed on a company employee. This summary is based on Verwey's fascinating article which investigates the authenticity of Schotuen's journal and the role which Schouten played in its publication. Herman de la Fontaine Verwey, "Willem Jansz Blaeu and the voyage of Le Maire and Schouten," *Quaerendo* 3, no. 2 (1973): 89-92, 100.

[109] Deursen, Smit, and Roelevink, *Resolutiën*, III:164 (1019). The resolution mentions the directors in Amsterdam without clarifying whether this was the Gentlemen Seventeen who were meeting in Amsterdam at the time or if they meant the directors of the Amsterdam chamber. From the wording, the latter is more likely.

[110] Ibid., III:352-353 (2319).

[111] Barreveld, *Tegen de heeren*, 168.

[112] NL-HaNA 3.03.02 Hoge Raad van Holland en Zeeland inv. nr. *935* (1622), Register der dictums... gepronuncieerd, scan 29.

monopoly. This was an issue that was supposed to be concluded by the States General. Despite not having any jurisdiction, the bench believed unanimously, that the Australia Company had no right to trade anywhere lying east of the Cape of Good Hope and west of the Strait of Magellan. This pronouncement entrenched the VOC monopoly.[113] These pronouncements did not settle the disputes between the VOC and the Australia Company, however, which continued into the 1640s.

From the States General's resolutions it is clear that interpreting the articles of the VOC's charter was central to the dispute between the companies. Had the Australia Company broken the VOC monopoly? This question was certainly intertwined with the issue of compensation for the seizure of the ship but was something which was also connected to the granting of a monopoly to the Australia Company for future voyages. The Australia Company had received a charter from the States General to undertake their initial voyage and based on the result of that voyage – the discovery of Le Maire Strait – had requested that their rights be expanded. In July 1617, the Australia Company directors requested that the States General extend their permission from four journeys to eight through the Le Maire Strait over the following 20 years. The monopoly aspect of their request was clear: they asked the States General to forbid all inhabitants of the Republic to sail south of the Magellan Strait for the period of the Australia Company's voyages.[114] Their request was based on the offer of monopolies over discoveries issued by the States General in 1614.[115] According to Bruijn, Le Maire and Schouten had been instructed not to trade in areas where the VOC was active.[116] But the company clearly had designs on trading in Asia: Barreveld points out that their requests over the course of the 1610s entailed the right to trade with places in Asia not under the control of the VOC, that is places they reached through the new strait, including Africa, India, China, Japan and all other lands not yet 'discovered'.[117] This was a serious challenge to the VOC's monopoly of the area.

The Australia Company's vision for their own trade was not neatly divided into Atlantic and Indian Oceans, but displayed a continuous westward view. The monopoly request on the Le Maire Strait was simultaneously a serious challenge on the VOC monopoly and on a future West India Company. In May 1620, the directors of the Australia company made an attempt to protect the rights that they had been granted in light of a

[113] Barreveld, *Tegen de heeren*, 168-175.
[114] Deursen, Smit, and Roelevink, *Resolutiën*, III:164 (1018).
[115] Ibid., III:163 (1011). The States General's offer of a charter (*Generael Octroy*) to 'discoverers' of new routes or lands included a monopoly over navigation sufficient for four voyages. Cornelis Cau et al., eds., *Groot Placaet-boeck vevattende de placaten, ordonnantien ende edicten van de Doorluchtige, Hoogh Mog. Heeren Staten Generael der Vereenighde Nederlanden ende vande Ed. Groot-Mog. Heeren Staten van Hollandt en West-Vrieslandt; mitsgaders vande Ed. Mog. Heeren Staten van Zeelandt. Waer by noch ghevoeght zijn eenige Placaten van voorgaende Graven ende Princen der selver Landen, voor soo veel de selve als noch in gebruyck zijn.*, 10 vols. ('s Gravenhage en Amsterdam: Hillebrandt Jacobsz van Wouw etc., 1658-1797), I:563-566. Various others took advantage of this opportunity, including the firms which were active in the fur trade in North America. They chose to merge and then received a monopoly from the States General, in October 1614. Deursen, Smit, and Roelevink, *Resolutiën*, II:337 (861).
[116] Bruijn, "The Dutch role," 429-430.
[117] Barreveld, *Tegen de heeren*, 164.

potential monopolistic West India Company. They wanted the States General to ensure that, even if a West India Company were established, the rights that the Australia Company had received would be maintained. The States General did not take an immediate decision.[118]

When the WIC was chartered in 1621, it received the exclusive rights to the passages via South America: Article One of the WIC charter specified that no inhabitants of the Republic except those acting in the name of the newly founded company would be allowed to use the Magellan Strait, Le Maire Strait, or any other straits or passages in the vicinity.[119] Unsurprisingly, Le Maire and his chartered Australia Company opposed this.[120] By July 1622, the West India Company had already been chartered but had not yet managed to raise the necessary capital to begin exercising its rights. As mentioned before, during this period, the firms trading with North America were still operational.[121] It is possible that the Australia Company saw this period as something of a limbo. A request from the directors of the Australia Company was put aside until the West India Company matter had been concluded. What exactly that meant is not clear, but it likely refers to the difficulty the company faced in beginning its operations.[122] In 1623 how the discovery of the Le Maire Strait and concomitant rights interacted with the monopoly charter granted the WIC two years earlier was still being considered. On 22 March 1623, delegates from Holland wanted to consult their principals over a remonstrance from the Australia Company directors. The latter intended to equip and send out two ships, regardless of the WIC charter.[123] The Australia Company was certainly persistent. Two years later, in 1625, the Australia Company asked that their monopoly on the Le Maire Strait be maintained. Later that same year, in December, the States General commissioned four men to examine the monopoly and consider whether or not it was fair and to sound out the terms that would satisfy the Australia Company. Presumably, by satisfy the States General meant to settle decisively the conflicts between their monopoly and the WIC charter.[124]

After Isaac Le Maire's death in 1624, his attempts to enter into the VOC charter area were continued by his heirs. The dispute between the two companies, based on their charters, continued into the 1640s. After decades of arguments and counter-arguments, the States General decided not to make a judgment. Instead, they referred the case to the Court of Holland. Barreveld concludes that "[t]he [Australia] Company was defeated by the power of the strongest, but not by the law."[125]

The Australia Company should be considered a competitor of both the VOC and the WIC in the early years of the companies' existence. Isaac Le Maire and his Australia Company proved to be a serious threat to the exclusivity of the VOC charter area, manifest not only in their voyage through the charter area but also in their requests for permission

[118] Deursen, Smit, and Roelevink, *Resolutiën*, IV: 453 (3124).
[119] Laet, *Iaerlijck Verhael*, 6-8.
[120] Barreveld, *Tegen de heeren*, 173-181.
[121] Bachman, *Peltries or Plantations*, 13-15.
[122] Deursen, Smit, and Roelevink, *Resolutiën*, V:565 (3713).
[123] Ibid., VI:83 (540).
[124] Ibid., VII: 598 (3466); 3668 (3865).
[125] Barreveld, *Tegen de heeren*, 177-181, quote 181.

to trade within the charter area of the company. In addition, they were one amongst a number of threats to the exclusivity of the WIC charter area in their attempts to monopolise the use of the Le Maire Strait. Like in the decades-long struggle between van Noort's Magellan Company and the VOC, the disputes between the Australia Company and the VOC, and later also the WIC, played out between the political and legal institutions in the Republic. The States General played a crucial role in managing both sets of disputes. That should not come as a surprise, given the fact that it was the States General that issued charters, and it was those charters which formed the basis of the conflicts between the companies. These were not disputes over the legality of monopolies per se, but rather over the terms of monopolies, and attempts to constrict monopolies in order to carve out a space for their own activities.

Figure 9: Portrait of Jacob Le Maire

Pieter Serwouters, Portrait of Jacob Le Maire, in or after 1616-1657. Rijksmuseum, Amsterdam.

The VOC and WIC at odds

The relationship between the VOC and the WIC was, at times, tense. Tensions arose at two specific moments, decades apart, when one company believed the other to have penetrated its monopoly area. During the 1650s, the two companies were at odds over Cape Town, established by the VOC as a refreshment station in 1652 in the WIC's charter area. The second conflict arose in the 1720s when Jacob Roggeveen entered the VOC's charter area via the Pacific, sailing in service of the WIC. The conflict which ensued was steeped in recollections of Jacob Le Maire and Willem Schouten's voyage for the Australia Company. Both episodes will be recounted here to explore the different ways in which the companies chose to manage and resolve conflicts. The VOC and the WIC did not face each other in court, out of choice. The Cape Town issue shows how the WIC tried to incorporate illegal activity and thus make it legal in order to profit from it. The second conflict, over Roggeveen's activity, indicates that the VOC learned from the Australia Company conflict and so chose to keep the Roggeveen issue out of court and thus avoided a suit against the WIC.

Contentious Cape Town

Jaap Bruijn stated in passing that the creation of the WIC in 1621 impinged on the VOC's monopoly. The VOC's monopoly, he writes, was "partly restricted" by the demarcation of the WIC's charter area.[126] The area of exclusivity delineated in the VOC's 1602 charter was designated "east of the Cape of Good Hope" reached either via the route round the Cape or through the Magellan Strait.[127] That the Magellan Strait was to be used exclusively by the VOC was intended to close off loopholes in the charter. In chartering the WIC in 1621, the route to Asia via the Magellan Strait and across the Pacific came under the new company. In addition, the VOC fleets would sail through the Atlantic part of the WIC charter area in order to enter the VOC charter area which began at the Cape of Good Hope. Thus, VOC fleets sailed through the WIC's charter area on every single voyage. As long as the VOC ships were not conducting trade along the way, sailing through the charter area was not a problem.

Tensions arose between the companies in the 1650s over Cape Town, which city Math Verstegen called "an illegitimate child of the VOC".[128] The garden and fort at Cape Town were in fact west of the beginning point of the VOC's monopoly, the Cape of Good Hope, and thus lay within the WIC's charter area, not the VOC's.[129] This crucial detail did not pass unnoticed amongst the directors of the companies. According to Dan Sleigh, Cape authorities were aware of the vulnerability of their claims on the coast north-west of

[126] Bruijn, "The Dutch role," 425-426.
[127] Original: "*beoosten de Cape bonne Esperance*." 1602 Charter, Article 34 published in Witteveen, *Een onderneming*, 94.
[128] Math Verstegen, *Kaapstad: Een onwettig kind van de VOC* (Zaltbommel: Europese Bibliotheek, 2002). The 'illegitimate' or 'unlawful' nature of the settlement referred to here is based on the company's charter, not on the question of land rights and claims of the local people. In the opening chapters of his book Verstegen does explore the legal basis of the Cape settlement, the accuracy or not of *terra nullius* and other arguments used to justify colonial claims.
[129] Ibid., 39-49.

Table Bay in late 1652.[130] Further incursion into the WIC charter area came in the form of VOC slaving expeditions on the West Coast of Africa. Two slave ships, the *Hasselt* and *Maria,* were sent to the Cape by the chamber Amsterdam to be used on slaving expeditions on the west coast. The *Hasselt* sailed under permission from the WIC, granted in exchange for a fee, but it seems the *Maria* did not.[131]

The real conflict over Cape Town arose in 1659 when the Gentlemen Nineteen submitted a complaint to the States General that the Cape fell within the WIC's charter area, not the VOC's. Rather than handle the situation themselves, the States General had the two companies meet to solve the problem between them. Verstegen is convinced that the WIC did not intend to take over the VOC's settlement but saw an opportunity for financial gain. The outcome of the meeting was that the VOC would remain in control of the Cape settlement but pay the WIC a yearly 'recognition' fee.[132]

Such an arrangement was clearly not without precedent in the 1650s, as the *Hasselt* slaving agreement shows. Even earlier, following the States of Holland's failed VOC-WIC merger attempt of the 1640s, the VOC paid the WIC the sum of *f*1,5 million in order to avoid merging the two companies. The WIC looked to the VOC as its financial saviour on a number of occasions over the following decades.[133] The conflict over the Cape settlement in 1659 can be understood as the WIC asserting its charter rights for financial gain. This fits into the pattern of the WIC allowing entrance into its charter area and essentially licensing out its monopolies. By charging a recognition fee, the company turned what was illegal according to its charter into legal activity from which it could profit.

Roggeveen

The WIC's exploration of the Pacific in the 1720s – an ocean within its charter area but largely ignored in favour of the Atlantic – brought the VOC and the WIC into conflict over their respective charter areas once again. Jacob Roggeveen sailed across the Atlantic and into the Pacific in service of the WIC. When he reached the western limits of the WIC charter area, near New Guinea, he chose to sail into the VOC charter area where he was

[130] Dan Sleigh, *Die Buiteposte: VOC-buiteposte onder Kaapse bestuur, 1652-1795* (Pretoria: Haum, 1993), 414. He cites the source: *"eenighsints met een Caepse gerechtigheijt".* For a specific example of the use of Saldanha Bay see Nigel Worden's account of the arrival of the VOC ship *Loenderveen* at Saldanha (1732) in Nigel Worden, "'Below the Line the Devil Reigns': Death and dissent aboard a VOC vessel," *South African Historical Journal* 61, no. 4 (2009). For more general information on Saldanha, the west coast islands and other outposts used by the VOC see Sleigh, *Die Buiteposte*.

[131] Verstegen, *Kaapstad: Een onwettig kind*, 40.

[132] Ibid., 39-40.

[133] Henk den Heijer, "Plannen voor samenvoeging van VOC en WIC," *Tijdschrift voor Zeegeschiedenis* 13, no. 2 (1994): 115-127. Den Heijer recounts a number of points in time at which the WIC tried to alleviate its financial situation with payout from the VOC. In the 1660s-70s WIC bondholders suggested leasing the gold trade to the VOC for a yearly fee; in 1704 the WIC tried to extract a payment from the VOC based on the idea that the VOC actions in Asia had altered the Republic's position in a peace agreement with Portugal, which meant the WIC lost out on payments by the Portuguese for the takeove of Dutch Brazil; increased financial losses after the War of Spanish Succession, which ended in 1713, and the loss of the *asiento* the English, led the WIC to propose that the VOC take over the company entirely. Den Heijer is not convinced of the Gentlemen Ten's seriousness: he interprets their proposal as an attmept to get a payout similar to 1647. The VOC refused the takeover and would not pay compensation.

met with hostility and suspicion from company officials. The VOC authorities in Batavia treated him as an interloper and, like Jacob Le Maire and Willem Schouten more than a century earlier, Roggeveen and his crew were sent back to the Republic, their own ships and cargoes having been confiscated by the company. The dispute continued in the Republic on their return, but having learnt from the Australia company legal battle in the 1620s, the VOC kept the matter out of the courts.[134]

Roggeveen set out on a voyage from the Republic in 1721, in the service of the WIC. Having revived the plan his father devised in the 1670s, his expedition set out for the Pacific, to find the fabled *Terra Australis*, known in Dutch as *Zuidland.* With dwindling provisions and a crew decimated by death and disease, Roggeveen entered the VOC charter area to provision his ships. When Roggeveen's ships were first sighted within the charter area, in the Moluccas, the Governor of Ambon reported the arrival to Governor General Zwaardecroon in Batavia, with the suspicion that the ships were interlopers from Ostend.[135] Roggeveen himself also wrote to the Governor General in Batavia, setting out the reasons for entering the limits of the VOC's charter area, namely, provisioning his ships. At the same time, he wrote to his relative by marriage, Cornelis Hasselaar, Councillor of the Indies, asking for his support. However, this connection did not help him; nor did his reputation in Batavia as a difficult and unpleasant man, gained when he himself was Councillor of the Indies there.[136] When the Council in Batavia considered Roggeveen's request for permission to sail to Batavia, they made a direct link between his activities and those of Jacob Le Maire and Willem Schouten. Like their ship *Eendracht,* Roggeveen's vessels would be seized, with their cargo, as well as their papers. The council reported their decision to the Gentlemen Seventeen. Unsurprisingly, when Roggeveen arrived in Batavia and was confronted by VOC officials tasked with carrying out the council's decision, he resisted and remonstrated with them. Part of his indignation came from the fact that, as he claimed, the WIC offered assistance to VOC ships which arrived in poor condition in WIC ports.[137] When the VOC authorities inspected the papers handed over by Roggeveen, the premeditated nature of his entrance into the charter area – "a transgression against the company's rights" as Sharp puts it – was sufficient grounds for seizure of the ships and goods, and grounds to dispatch the seamen to the Republic on company ships.[138]

Roggeveen, a trained lawyer, was forthright in his response which outlined the differences between the Australia Company and his own arrival in Batavia. Most importantly, his own ships were in need, had not intended to trade in the VOC's charter area, and had been seized on orders from Batavia while the *Eendracht* was seized on orders from the Republic and the option of restitution had been recognised at the time of

[134] Bruijn, "The Dutch role," 438-439; Andrew Sharp, ed. *The Journal of Jacob Roggeveen* (Oxford: Oxford University Press, 1970), 1-7, 166-178. The two authors are not in agreement on whether or not there were legal proceedings in the Republic. Bruijn contends there was a court case; Sharp indicates otherwise.
[135] Sharp, *The Journal of Jacob Roggeveen*, 167-168.
[136] Ibid.; Bruijn, "The Dutch role," 438-439.
[137] Sharp, *The Journal of Jacob Roggeveen*, 168-169.
[138] Ibid., 170-171.

seizure, according to Roggeveen.[139] On hearing this, Zwaardecroon and the councillors decided to leave the matter to be dealt with by their superiors, the Gentlemen Seventeen in the Republic.[140]

According to Jaap Bruijn, "Roggeveen and the WIC successfully took the matter to court and were financially compensated."[141] Bruijn is not however clear on which court that was, or when the suit took place. In contrast to Bruijn, Andrew Sharp indicates that the VOC chose to settle out of court rather than face another iteration of the VOC versus Australia Company case. Delegates of the VOC Chamber Amsterdam recommended that the company avoid litigation, which advice they based on their research on the case against the Australia Company in the High Court. Instead of legal proceedings, delegates met to negotiate a settlement. The negotiations between the VOC and the WIC advocates began in July 1723 and were concluded in March 1725 when the agreement was authorised by the WIC chamber Amsterdam and the Gentlemen Seventeen. Not only did the parties agree to the sum of *f*120,000 in compensation plus the wages over and above that, payable to the WIC, they also deleted the term illegal to describe Roggeveen's entrance into the VOC's monopoly area.[142]

By the 1740s, the WIC's interest in the Pacific had waned to such an extent that when Batavia Governor General van Imhoff defied the company's monopoly, the WIC seems not to have responded. Van Imhoff sent fleets into the Pacific with the intention of entering the silver and gold trade by establishing a direct link between Batavia and Mexico. Neither expedition was successful, and it was not tried a third time. Neither company pursued opportunities in the Pacific in the following decades.[143]

The VOC and the WIC infringed on each other's charter areas causing conflicts between the companies over their exclusive trading rights across vast swathes of ocean. The conflict which arose over the location of Cape Town – established by the VOC, in the WIC charter area – was settled by the States General. Similarly, if we take Sharp's detailed account of the dispute, the conflict betweeen the companies over Roggeveen's infringement was kept out of court. A monetary settlement was reached by company negotiators. According to Sharp, this was evidence of the company learning from past experience, namely, the dispute with the Australia Company which was discussed earlier in this chapter. The importance of the monetary settlements should not be overlooked in the context of the WIC's long-standing financial woes. Allowing access into its charter area against payment of a fee, as the WIC did for the VOC, was also extended to private merchants.

[139] Ibid., 171.
[140] Ibid., 171-172.
[141] Bruijn, "The Dutch role," 439.
[142] Sharp, *The Journal of Jacob Roggeveen*, 173-177.
[143] Bruijn, "The Dutch role," 439-440.

Contracted entrance into the WIC charter area

Private merchants were granted entrance into the WIC's charter area from very early in the company's existence. The patroonship system (*patroonschap*) allowed for private colonisation efforts within the WIC charter area, already in the 1620s. In return for a recognition fee, a patroon was granted land to establish a colony in the company's charter area.[144] Privatised colonisation included delimited rights to trade for the patroon and colonists.[145] Merchants in the Republic were also allowed to undertake limited trade in the name of the company, provided they paid the recognition fee which the chambers established at least from the second charter in 1647 onwards.[146] In this way, the company's exclusive rights to its charter area were recognised while private merchants undertook the commercial activity. The contracts functioned like licences. While the WIC maintained its rights over the charter area, over time the company undertook less trading activity itself.[147]

This section focusses on the contracts which were drawn up and later disputed between WIC chambers and two men, the first a Dutch merchant named Laurens Verpoorten, and the second the Duke of Courland's factor in Amsterdam, Henry Momber. They show the mechanisms by which merchants entered into the WIC's monopolies – how contracts were drawn up, the fees attached, and the terms set between the signatories. The litigants in the contract disputes were the private merchants on one side, and the directors of one or more WIC Chambers on the other. The reason that it was chamber directors who were involved in these cases rather than the Gentlemen Nineteen or Ten, was likely twofold. Firstly, the WIC was characterised by an element of regional specialization, whereby particular chambers were more involved in trade to specific Atlantic regions than others. This was the case with Amsterdam and New Netherland, and Zeeland and the Wild Coast.[148] Secondly, in the federalised structure of the WIC, equipping and sending out ships was dealt with semi-independently by the five company chambers. Both cases were appealed in the High Court when one party felt itself aggrieved. Because these contracts allowed entrance into the charter area granted to the WIC by the States General, they had implications for the monopolies which the company was trying to protect and from which it was trying to profit.

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[144] Heijer, *De geschiedenis van de WIC*, 81.

[145] On the 'Freedoms and Exemptions' first issued in 1629 see Jacobs, *New Netherland*, 112-132. In that initial document, the patroon was allowed to trade along the entire coast but not in furs in places where the WIC had an agent (*commies*). The company's grip on the firm trade weakened in subsequent versions of the 'Freedoms and Exemptions'.

[146] Cátia Antunes, Rob Post, and João Paulo Salvado, "Het omzeilen van monopoliehandel. Smokkel en belastingontduiking bij de handel in brazielhout, 1500-1674," *TSEG/Low Countries Journal of Social and Economic History* 13, no. 1 (2016): 44 (Table 43).

[147] Apart from trade, the company profited from the activities of privateers in the charter area, receiving a percentage of the prize value. Unlike trade, the company never claimed exclusive rights to privateering within the limits of its charter. Heijer, *De geschiedenis van de WIC*, 67-68.

[148] Ekama and Odegard, "Multiple Geographies," 10-15.

WIC vs. Verpoorten

Laurens Willems Verpoorten was deeply involved in slave trading, both legal and illegal. His family rose to prominence in Middelburg civic life over the course of the seventeenth century: by 1670, Arjan van Dixhoorn notes, the family was a part of the wealthy Middelburg patriciate.[149] Most likely a man of Orangist sympathies, Laurens Willems Verpoorten took up a position on the Middelburg city council in 1673, the year following the notorious 'Disaster Year'. Over the following decades, he, and then his son Michiel, occupied positions as councillor (*raad*) and alderman (*schepen*) in Middelburg.[150] During that same period, Laurens and his son Michiel were investors in both the VOC and WIC, making far greater investments in the latter company. Laurens Willems Verpoorten was a director in the Zeeland Chamber during the final years of the first WIC. He was also a privateer.[151]

During the 1660s and 1670s Laurens Willems Verpoorten was involved in the trans-Atlantic slave trade. The 11 expeditions of which he is recorded as vessel owner principally supplied the Dutch Guianas with enslaved labour, and to a lesser extent Martinique and Guadaloupe in the (French) Caribbean.[152] Despite the illegal nature of the voyages to Suriname, the captains of his vessels, Claes Raes and Jan Dimmerse, were welcomed there when they arrived with slaves.[153] All the expeditions were completed as intended except for one. In 1664 Verpoorten's *Goude Poort* was captured by the Dutch. The vessel had departed from Zeeland but sailed under Captain Toussaint Le Sage flying a French flag.[154] It was not however this incident which led to the dispute between Laurens Verpoorten's son and heir Michiel and the WIC but two account entries which stemmed from two other slaving voyages, those of the *Diamant* in 1664 and the *Zeven Gebroeders* in 1668.

Michiel Verpoorten claimed that the WIC owed his father's estate money from two slaving voyages. The first account entry that was disputed by Michiel amounted to just over *f*3,300. According to Michiel, this sum was owed to Laurens Verpoorten by the WIC chamber Zeeland for goods which had been delivered to the company's agent (*commies*) in Angola. Captain of the *Diamant*, Claes Raes, had handed over goods to the agent Andries Crava and in return, Raes received a deed stating that the goods had been accepted on the company's account but no payment had been made.[155]

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[149] Arjan van Dixhoorn, *Lustige geesten. Rederijkers in de Noordelijke Nederlanden (1480-1650)* (Amsterdam: Amsterdam University Press, 2009), 127.

[150] *De magistraat der stad Middelburg, die regeert hebben sedert anno 1560*, (Middelburg: Willem de Klerk, 1744), unpaginated. Between 1673 and his death in 1681 Laurens Willems Verpoorten was alderman (*schepen*) five times, and councillor (*raad*) three. He was succeeded by his son Michiel Verpoorten who was *raad* or *schepen* each year from 1685 to 1701.

[151] http://www.lustigegeesten.nl/prosopografie/prosopografie_more.php?search_fd0=M91 (accessed 2017-11-18).

[152] TASTD: http://www.slavevoyages.org/voyages/U4vzEl27 (accessed 2017-11-18). These expeditions were undertaken by five different ships.

[153] Suze Zijlstra cited in Fatah-Black, *White Lies and Black Markets*, 147.

[154] TASTD: http://www.slavevoyages.org/voyage/33814/variables (accessed 2017-11-18).

[155] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *788* (1696) Geextendeerde Sententies, f. 5v, scan 7. The amount specified in the court documents is 550 Flemish Pounds. For conversion to Holland Pounds and guilders see http://www.dwc.knaw.nl/biografie/christiaan-huygensweb/eenheden/geld-en-munten/.

The second disputed item in the deceased Laurens Verpoorten's account with the company concerned enslaved people embarked on the voyage of the *Zeven Gebroeders*. It is here that the issue of contracted entrance into the company's monopoly comes to the fore. In 1667 Laurens Verpoorten and an associate, van Rijst, equipped a ship in Middelburg for trade in enslaved Africans. The men sought the permission of the company to complete such a voyage. While it is not specified, it is likely that they presented themselves in person at a meeting of the chamber directors. There they received a contract: they were permitted to trade 200 slaves at Calabar (Nigeria) under the condition that the company could appoint a supercargo to travel on board and take note of the human cargo embarked. Furthermore, they would be charged a sum of 500 Flemish pounds in recognition fees, plus *f*15 per slave over and above the 200.[156] With permission in hand, the *Zeven Gebroeders* set sail in April 1668 with Captain Jan Danissen in charge, and supercargo Jan Wesdorp surveying their dealings. On their return the following year, Wesdorp reported to the Zeeland chamber directors that not 200 but 333 slaves had been traded thus incurring a fee of 332 Flemish Pounds. Michiel Verpoorten contended that the company had shortchanged his father this amount by deducting it from his accounts.[157]

In the years after his father's death, Michiel Verpoorten pursued litigation to force the directors of the Zeeland chamber to repay the two disputed sums. To resolve the conflict, Michiel Verpoorten turned to his fellow Middelburg Aldermen before whom he made his claim to the two sums plus interest of four per cent. The company disputed both claims. On 18 October 1689 the Middelburg court denied Verpoorten's claim to payment for the goods delivered to Crava in 1665. No verdict was pronounced regarding the fee for embarking additional slaves during the 1668-9 voyage of *Zeven Gebroeders*. That claim was denied by the same court two years later, on 15 February 1691.[158]

Feeling greatly aggrieved by the decision of his peers in the city court, Verpoorten proceeded to the High Court. It is possible that his position on the city council of Middelburg afforded him the privilege of bypassing the Provincial Court (Court of Holland). In the High Court Michiel Verpoorten, via his lawyer (*procureur*) Abraham Gachart van Wouw, sought nullification or correction of the two sentences passed in Middelburg. On the other side, the Zeeland chamber's lawyer George Rosenboom sought to have Verpoorten declared not aggrieved by the lower court's rulings. [159]

Michiel Verpoorten's case fared far better in the High Court than it had in Middelburg. The High Court upheld the Middelburg court's first sentence – Verpoorten was not aggrieved, they found, by the denial of payment for the goods delivered to Crava in Angola. In fact, the Zeeland directors had argued – clearly convincingly – that Crava never received goods from the *Diamant* on the company's account nor gave a deed of sale.[160] But on the second account item, Verpoorten prevailed. The 1691 sentence was overturned by the High Court and a new verdict pronounced: the company was sentenced

[156] Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *788* (1696) Geextendeerde Sententies, f. 8v, scan 10.
[157] Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *788* (1696) Geextendeerde Sententies, f 8r, scan 9.
[158] Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *788* (1696) Geextendeerde Sententies, ff. 6v-7r, scan 8.
[159] Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *788* (1696) Geextendeerde Sententies, f. 7v, 8v, scan 9, 10.
[160] Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *788* (1696) Geextendeerde Sententies, ff. 9r-v, scans 10-11.

to furnish Michiel Verpoorten with shares in the new company's Amsterdam chamber to the value of approximately *f*2000 plus interest of four per cent per annum calculated from the start of the legal proceedings until the full amount would be paid. Seeing as he succeeded in one of his two claims, Verpoorten was required to pay half of the fine of *reformatie* and half of the court's fees. This was pronounced by the High Court on 14 February 1696.[161]

In Laurens Verpoorten we see a multi-faceted picture of a company man who was simultaneously an investor, director, Middelburg official, illegal trader and privateer. He was certainly not alone in the complex relationship he had with the WIC, being both an insider and a monopoly-breaker.[162] The case that his son pursued against the WIC in the late seventeenth century reveals the details of contracted entrance into the WIC monopoly and how the terms of those contracts were disputed. So far, this chapter has focussed on how men from the Republic entered into the VOC and WIC monopolies either by trying to maintain or gain charters of their own, or by contract with the chambers. The focus now shifts to the relationship between the WIC and a foreign potentate, the Duke of Courland, whose factor drew up contracts with the WIC in the 1650s.

WIC vs. Courland

Courland and Semigallia was a small Baltic duchy located in what is today Latvia. During the seventeenth century it was a vassal of the Polish-Lithuanian Commonwealth. In the course of Duke Jacob Kettler's rule, the duchy of Courland and Semigallia played a role in trade on the West Coast of Africa, the transatlantic slave trade, and settlement in the Caribbean, specifically Tobago. To date, the role of Courland in European expansion and colonisation has been ignored.[163] Interrogating the engagement between the WIC and the Duke's factor in Amsterdam in the political and commercial context of expansion is revealing not only of the mechanisms which underpinned Courland activities in the Atlantic but also of the nature of the first WIC's monopolies. The Courlanders used the WIC as a legal cover for their operations in Africa and in turn, the chambers of the WIC allowed the company's monopolies to be legally penetrable. This constitutes a fundamental difference between the VOC and the WIC which resulted in the WIC facing a type of opposition rooted in legal openings of the monopoly which the VOC did not face.

During the 1650s and 1660s Courland and the WIC came into persistent conflict over trade on the West Coast of Africa. Courtonian ships had been taking part in the trade from the 1640s.[164] These ships were a great nuisance to the WIC, but even more, contravened the charter. In November 1644 a ship (*fluijt*, flute) was reportedly trading

[161] Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *788* (1696) Geextendeerde Sententies, f. 9v-10r, scan 10-11.
[162] Paesie's research has shown the deeply intertwined nature of illegal trade and company involvement in Zeeland. Shareholders and even directors were investors in the illegal voyages. R. Paesie, "Lorrendrayen op Afrika: De illegale goederen- en slavenhandel op West-Afrika tijdens het achttiende-eeuwse handelsmonopolie van de West-Indische Compagnie, 1700-1734." (PhD, Universiteit Leiden, 2008), 108.
[163] This is certainly true for literature written in English as well as for the Dutch historiography. Courland's overseas history remains a field ripe for research.
[164] NL-HaNA, Staten Generaal, 1.01.02, inv. nr. *4845*, Resoluties, f. 196r [12 March 1646]. See also Furley, The Gold Coast 1639-45, N3, 172, 180, 181, 190, 224, 226, 249.

grain near the Rio de Sester (River Cestos, Liberia) under commission from the Duke of Courland. However, the ship set sail from Texel on 5 September 1644; it was said that she was crewed by a majority of Durgerdammers; and had been equipped and had taken in goods at Durgerdam, a town northeast of Amsterdam in the province of Holland.[165] That the Duke of Courland was involved in Atlantic trade was not a contravention of the WIC charter; as a free potentate he was at liberty to send ships. That his ship was equipped, crewed and sailed from the Republic was the problem.[166]

In May 1645 the Director General on the coast wrote to the Gentlemen Nineteen about another Courtonian ship, a vessel named the *Fortuijn*. This vessel was to prove a serious point of contention between the WIC and Courland over the following years. In 1645 Director General Ruyschaver reported that the *Fortuijn* was crewed by men from Holland, five of whom he named as former WIC employees.[167] It is likely that recruiting men with experience was a conscious strategy. The *Fortuijn* initially escaped the attempts of the WIC on the coast to lure the ship by interest in purchasing its cargo.[168] The vessel was later seized on order of the WIC and delivered to the Admiralty of Amsterdam by Admiral Witte Cornelis de Witt. It was declared to be good prize by Admiralty procedure, a pronouncement which prompted protest from the Duke of Courland via his representative, George Firch. In particular, he disputed the jurisdiction of the court over him, as a free potentate.[169] A remonstrance presented to the States General on behalf of the Duke of Courland a few days later included the request that the WIC be induced to return the *Fortuijn* and her cargo to the Duke.[170] The dispute dragged on for a number of years with requests and remonstrance, advice and reports from the Admiralty in Holland and in Zeeland, the provincial states, and commissioners including representatives of the Duke himself. In July 1649 – more than five years after the *Fortuijn* had begun her homeward voyage – the States General acquiesced to the Duke's demands. On the grounds of their "higher authority", the States General resolved "to end the procedures, and to return the ship and cargo, which was lying in Amsterdam, to the Duke out of courtesy and for reasons of state."[171] It is clear that the dispute between the company and the Duke was

[165] Furley, The Gold Coast 1639-45, N3, 172. Durgerdam was likely chosen for its proximity to Amsterdam as a financial centre; the shipyards of the Zaan area, including Zaandam, which were not bound by the strict guild regulations of Amsterdam shipbuilding and thus could build vessels more cheaply; and finally, the opportunity to tap into the maritime labour market in the vicinity. Thanks to Erik Odegard for pointing this out.
[166] Charter published in Laet, *Iaerlijck Verhael*, 6-8.
[167] The merchant Hillebrant Willemsen, skipper Jacob Rycken, and mate Claes Spaenjaerten were from Durgerdam; the *ondercommies* Isaac Jansen Schut was from Amsterdam; the barber was from Groningen; and the cook from Edam. These men had all been employed by the WIC with the exception of Willemsen. Furley, The Gold Coast 1639-45, N3, 180.
[168] Furley, The Gold Coast 1639-1645, N3, 180. The governor added the detail that the *Fortuijn* had "got a good parcel of grain" off the River Cestos and at other places and had sold the iron and arm rings that they carried at Assine (Assini, Ivory Coast) and Abinee (?). The cargo that the *Fortuijn* was willing to sell to the WIC was valued at 160 Mark, approximately *f*53,760. Conversion 1 Mark of gold valued at average *f*336 between 1674-1740. Heijer, *Goud, ivoor en slaven*, 128.
[169] NL-HaNA, Staten Generaal, 1.01.02, inv. nr. *4845*, f. 196r [12 March 1646]; f. 197v [23 March 1646].
[170] NL-HaNA, Staten Generaal, 1.01.02, inv. nr. *4845*, f. 197v [23 March 1646].
[171] Original: "*uijt hooger authoriteijt te surcheren de verdere proceduren, ende het gemelte schip met de ladinge, sulcx het selve tot Amsterdm voornt is leggende, uijt courtoisie, om redenen van staedt, aen den*

about more than the *Fortuijn*; diplomacy and politics had a role to play in the fight over the company's monopolies, and who could adjudicate disputes arising out of alleged breaches thereof. The States General managed the dispute between the parties, overturning the decision of the Admiralty court years after the verdict had been passed and did so explicitly for diplomatic reasons.[172]

Conflicts between the same parties erupted over other Courland ships which were pursued and seized by or on the orders of the WIC. In early 1653 the States General heard complaints regarding the treatment of the Courland ship named the *Walvisch* which was reportedly unarmed and crewed only by foreigners, presumably meaning men from outside the Dutch Republic.[173] In 1659 two more Courland ships were captured, namely *d'Invidia* and *Pietas*.[174] Like the seizure of the *Fortuijn*, the WIC's action against the *Pietas* was the catalyst of a long-running dispute. What differed was that the case of the *Pietas* was pursued to the High Court. Ostensibly, restitution of the ship and cargo was at stake. In fact, the legal records point to much deeper issues – jurisdictions, the freedom of a sovereign to conduct voyages, binding contracts, and the permeability of the WIC monopolies.

The Duke of Courland decided to send the *Pietas* to the West Coast of Africa to trade enslaved Africans and deliver them to the Caribbean. He instructed his Amsterdam factor, Henry Momber, to equip the vessel for the voyage which was done at the Duke's expense. Part of the cargo taken on board had been sent from Courland, the rest was purchased in the Republic; it was all taken in with a view to trading it for a "good number of slaves".[175] While little is known of the crew it is quite possible that they were hired in the Republic, following the pattern of the previously mentioned unnamed ship which reached the coast in 1644. The skipper (*schipper*) on board the *Pietas*, Arent Jacobssen, hailed from Huisduinen in Holland (now the province of North Holland), reinforcing the 'Hollandish' nature of the Courland voyage.[176] It is quite possible that the dispute between the Duke and the WIC over the *Fortuijn* played a role in the decision to seek permission from the WIC Chamber Northern Quarter for the voyage of the *Pietas*. On 26 May 1659 the Duke of Courland received contracted entrance into the WIC monopoly, whereby he received limited exemption from the charter regulations. Davidt van der Cruijs who held power of attorney for the Duke's factor, Momber, made the agreement with the chamber by which skipper Arent Jacobsz received a licence to trade within the WIC charter area. The contract entailed permission for the *Pietas* to sail from and return to the Republic; to trade on the

hoochgemelten heere hertoche te doen restitueren." NL-HaNA, Staten Generaal, 1.01.02, inv. nr. *4845*, ff. 470v-1r [31 July 1649].

[172] On the intermingling of prize cases and diplomacy see Nieuwenhuize, "Prize law."; Sicking, *Neptune and the Netherlands*.

[173] NL-HaNA, Staten Generaal, 1.01.02, inv. nr. *4846*, f. 50v [12 Feb 1653].

[174] *D'Invidia* is first mentioned in a resolution taken in 1665. NL-HaNA, Staten Generaal, 1.01.02, inv. nr. *4847*, f. 101v [10 July 1665].

[175] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *758* (1666) Geextendeerde Sententie, f. Cxxviii r, scan 131.

[176] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *758* (1666) Geextendeerde Sententie, f. Cxxviii r, scan 131.

West Coast of Africa in slaves and other goods; with the exception of the Gold Coast where no trade – not in gold, ivory or other goods – could be conducted. As was the practice in Atlantic trade under the WIC, a recognition fee was required on return, which was set by the chamber at *f*2000.[177] The Amsterdam chamber of the company refused to honour the agreement made with the Northern Quarter with the result that a second contract was drawn up which bestowed the same permission and required the payment of *f*3000 in recognition fees on the *Pietas*' return.[178] One element not touched upon in references to the two contracts was the hiring of crew in the Republic.

As a free potentate, the Duke did not require permission to equip and send ships to participate in Atlantic trade – which became something of a refrain in the High Court proceedings. But to use the Republic as the base for such ventures did require permission. With contracts in hand, the voyage of the *Pietas* appears to have been legal. But the terms of the contract were breached, resulting in the capture of the vessel in 1659. There seem to have been two points of conflict between the WIC and the Courlanders: the first related to investment in the voyage and the second to breach of contract. The voyage of the *Pietas* was financed by Amsterdam investors, namely Jacob Hinlopen of the famous Hinlopen family who were closely associated with the VOC, and a man named Louis Quickelenberg.[179] The multiple layers of people involved in the *Pietas*' expedition show the complexities of trying to pin down the 'nationality' of a particular voyage, and thus consider the legality or not from the point of view of different interested parties, including states. The second issue in the dispute between Courland and the WIC was that of breach of contract which the chambers tried to use as their justification for the seizure of the *Pietas* on the coast and its subsequent sentencing in Elmina.[180]

The court case which resulted from the seizure of the *Pietas* involved the factor, Momber on the one side, and the WIC chamber Amsterdam on the other.[181] The litigation which played out in the Republic was rooted in events which took place on the West Coast of Africa, beginning with the seizure of the *Pietas*. The seized ship was taken to Elmina where a sentence was passed in the company court there. The result was that the goods were confiscated, then sold, as was the ship, for the profit of the company.[182] The exact legal relationship between the Elmina sentence and the case which was pursued in the

[177] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *758* (1666) Geextendeerde Sententie, f. Cxxviii r, scan 131.

[178] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *758* (1666) Geextendeerde Sententie, f. Cxxviii v, scan 132.

[179] These men were not named in the legal proceedings – in which reference is made to Amsterdam *geinteresseerdens* – but their identities are revealed in the TASTD. Quickelenberg was involved in other slaving expeditions: he was named as a vessel owner of two other voyages, one of which involved the eminent Laurens de Geer. TASTD: http://www.slavevoyages.org/voyages/jgJaaP5o (accessed 2017-11-18).

[180] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *758* (1666), Geextendeerde Sententie, f. cxxx v, scan 134; f. cxxxiiii r, scan 136. The Elmina case was made against the skipper, Arent Jacobssen.

[181] The extended sentence does not specify a chamber, but the resolution of that 1669 sentence specifies Amsterdam. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *655* (1670) Resoluties, scan 27.

[182] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *654* (1669) Resoluties, scan 237. According to the TASTD, the enslaved on board the *Pietas* were disembarked in Buenos Aires. Andries Crava was listed as captain of the vessel. http://www.slavevoyages.org/voyages/jgJaaP5o (accessed 2017-11-18).

Republic is not clear. As set out in Chapter 1, sentences passed in company courts in the Atlantic could be appealed in the Court of Appeal (*Hof van Appél*) via the States General – that is, if the Court of Appeal existed before the chartering of the second WIC. The case between Momber and the WIC does not appear in the Court of Appeal archive, but in the papers of the High Court. In the High Court records, it is clear that it was an appeal case, but the sentence that was appealed was the one passed by the Court of Holland. What is apparent from the records, is that Momber sought a reversal of the Elmina sentence via litigation, even if the case in the Republic was not technically a direct appeal of the sentence against the *Pietas*.

The court records indicate that Momber's first legal move was to summon the two chambers – Amsterdam and Northern Quarter – to the Provincial Court. He had good reason for not beginning legal proceedings in a city court: Momber sued both chambers at the same time, and because each was located in a different jurisdiction, he sought permission from the Provincial Court to begin proceedings there, which was granted him.[183] The two company chambers were represented by a lawyer named Oven. On their behalf, Oven submitted three exceptions (*exceptien*) to the court by which the chambers hoped to have the case dismissed. Another part of their strategy was to delay the progression of the case until the sentence passed in the company's court in Elmina had been sent to the Republic. Without submitting copies for the opposing party, the chambers handed over the decision of the Elmina court to the Provincial Court, denying Momber time to prepare a defense.[184] These strategies did not, however, secure for the two chambers the favourable sentence for which they hoped. Court-ordered arbitration did not yield a settlement, thus the Provincial Court passed a sentence. The details were not included in the High Court records, but it is clear that the Amsterdam chamber was not satisfied with the verdict. That chamber felt it had been unfairly disadvantaged by the ruling. However, the Chamber Northern Quarter accepted the verdict and pursued no further legal action. The case heard before the High Court was thus between the Amsterdam chamber and Momber in his capacity as the Duke of Courland's factor.[185]

The High Court pronounced a sentence in the dispute in 1666. The judges concluded that the Amsterdam chamber of the WIC had not been aggrieved by the sentence of the Provincial Court. For his part, Momber had submitted grievances (*grieven a minima*) with his claim which the court rejected.[186] What Momber was after was payment of the value of the ship which had been confiscated on the African coast, the ammunition aboard, the victuals, and all the cargo, which included more than 200 slaves. This was granted to Momber by resolution of the Court in 1669 with the explanation that the WIC had not succeeded in proving that the limits of the contract between Momber and the Chamber Amsterdam had been exceeded by the skipper Arent Jacobssen.[187] By 1670

[183] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *758* (1666), f. cxxix v, scan 133. The chambers however, did not like this approach, and appealed the granting of *mandament* to Momber in the High Court.
[184] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *758* (1666), f. cxxx v, scan 134. The three exceptions were *Litispendentie*, *litisfinitie*, and *incompetentie*.
[185] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *758* (1666), f. cxxxi r, scan 134.
[186] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *654* (1666), Resolutie, scans 52-3.
[187] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *654* (1669), Resolutie, scan 237.

Momber had obviously not received the sum owed him by the chamber for which reason he sought execution of the sentence. The judge Druijff recommended that Momber be paid *f*28,000 for the *Pietas* plus *f*23,000 for the goods on board, plus interest over both sums.[188] This is the last of the court's records of Momber's dispute with the WIC chambers.

From the court's pronouncements, it is clear that the WIC came off second best in their dispute with Momber. The confiscation of the ship on the African coast on the grounds of breach of contract and by extension infringement on the company's monopoly was not legitimized by the court; rather the Amsterdam chamber was sentenced to reimburse the value of the confiscated ship and cargo, a sum in the region of *f*51,000 plus interest.

From the point of view of Momber, and by extension of Courland, using the WIC as cover for their operations in Africa was part of a larger strategy which involved a close relationship with England, possibly at the beginning of the 1650s, and certainly in the mid-1660s.[189] The Courland relationship with England was significant to the WIC and the States General because of the outbreak of the Second Anglo-Dutch War (1664-1667), in the context of which the dispute in The Hague was pursued. In the mid-1660s the relationship between Courland and England was formalised which caused a rift between Courland and the Dutch Republic. In 1664 King Charles II of England granted the Duke of Courland a patent, allowing him to trade freely on the coast of Guinea under the Great Seal of England. In return, the Duke committed to supplying Charles with a warship for one year during times of war, except against Poland.[190] As a result of this contract, the Duke of Courland became an enemy of the Dutch Republic during the Second Anglo-Dutch War. It was in this political and commercial context that the case between the WIC and the Duke's factor, Henry Momber, continued in The Hague.

In light of the patent acquired from Charles II to trade on the West Coast of Africa, the relationship between Courland and the WIC takes on a different hue. It would appear that Momber in particular identified contracted entrance into the charter areas of monopoly companies as a means of conducting trade on the West Coast of Africa. Considering the numerous complaints regarding the capture of Courland ships in the 1640s and 1650s, the making of contracts with the WIC chambers Enkhuizen and Amsterdam can be understood as a means of legalising and protecting what had previously been illegal, at least from the point of view of the WIC prohibition on equipping and crewing ships in the Republic.

From the point of view of the WIC, the agreement made with Courland should be understood in the context of the company's financial woes. Allowing private merchants from the Republic to trade within the charter area in return for a recognition fee was a

[188] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *654* (1669), Resolutie, scan 237; inv. nr. *655* (1670), Resolutie, scan 27.
[189] An unnamed slave ship owned by the Duke of Courland sailed under a British flag in 1651/2. TASTD: http://www.slavevoyages.org/voyages/msjR1ZGF (accessed 2017-11-18).
[190] 'America and West Indies: November 1664', in W. Noel Sainsbury, ed. *Calendar of State Papers Colonial, America and West Indies*, vol. 5 (London: Her Majesty's Stationery Office, 1880), 250-258. *British History Online* http://www.british-history.ac.uk/cal-state-papers/colonial/america-west-indies/vol5/pp250-258 (accessed 2016-05-09).

means for the company to profit from trade which was being undertaken beyond its own capacities to conduct or control. While the WIC monopoly was clearly penetrable by illegal activity, which is the subject of Chapter 3, the granting of contracted entrance indicates that it was in fact legally penetrable too, and this not only for merchants from the Dutch Republic. It is likely that this extended beyond the Courlanders; the representative (*gemachtigde*) of the French West India Company was granted permission by the States General to sail the ship *Europa* from Amsterdam. However, the ship was seized on its return from the West Coast of Africa. The arrest of the ship caused a dispute between the directors of the WIC and the French which arose in the High Court. The directors' claim that the *Europa*, which was equipped and crewed in Amsterdam and had goods on board which the WIC also traded on the West Coast of Africa, had broken the company's monopoly was weighed up against the permission granted to the French Company's representative by the States General. This adds another layer to the permeability of the company's monopoly: the States General allowed foreigners access into the charter area.[191]

The cases between the WIC chambers and those involved in the slave trade, Laurens Verpoorten and the Duke of Courland, show the way that the company allowed access into its charter area by the granting of contracts. These contracts were drawn up between a specific company chamber and in the first case, a private merchant who was a subject of the States General, and in the second case with the representative of a foreign sovereign. Both contractual agreements led to legal proceedings, but via different routes. The Verpoorten case was heard in the city court in Middelburg and then appealed in the High Court. The claimant, Michiel Verpoorten, believed the WIC had shortchanged his father. The case between the Duke of Courland's factor Henrij Momber and the WIC Chambers Enkhuizen and Amsterdam, and later only Amsterdam, arose after the Duke's ship *Pietas* was captured and sentenced in Elmina. That case was heard in the Court of Holland and then appealed in the High Court. The legal proceedings took place in the context of fraught relations between the WIC and Courland, and indeed diplomacy was a very significant issue in this and in previous disputes over confiscation of vessels. The two disputes, embedded as they were in the larger context of illegal trade on the West Coast of Africa, show that the WIC allowed competitors into its monopoly through the granting of contracts for private trade.

Conclusion

The intention behind grouping these disparate VOC and WIC disputes together was to reveal the ways in which the VOC and the WIC managed conflict related to their monopolies. What the conflicts show is that the companies faced different kinds of monopoly-related challenges and had different responses. Competitors challenged the

[191] NL-HaNA, Staten Generaal, 1.01.02, inv. nr. *4847*, Resoluties, 128r [30 Sept 1666]; 129r [26 Oct 1666, 4 Nov 1666]; 154r [1 Sept 1667]. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *899* (1667), Register der dictums...geresolveerd, scan 246; inv. nr. *654* (1667), Resoluties, scan 132.

VOC's monopolies by protecting or claiming privileges of their own to undertake activity within the VOC's charter area. Admiral van Noort opposed the creation of the VOC in the early years of the 1600s on the grounds of the privileges he had received from the States General. His Magellan Company was not part of the VOC merger in 1602. Rather, in gaining protection which was incorporated in the 1602 charter, he carved out a continued existence for his company. Over the following decades, the Magellan Company proved to be a tough competitor. Similarly, Isaac Le Maire tried to encroach on the VOC monopoly by requesting a charter for his Australia Company. His son, Jacob Le Maire and the rest of the seamen 'discovered' a new passage into the Pacific which they used as the grounds for their claims. The Australia Company too was engaged in decades long conflict with the VOC. By the 1640s, both the Magellan Company and the Australia Company ceased to exist.

The conflicts which the WIC faced with regards to their monopolies took a different form. Rather than trying to keep competitors out, the WIC allowed competitors in, on certain contractual conditions and in return for a fee. The contract system which the company implemented sanctioned private trade within the WIC charter area. In this way, private trade which would have been illegal, was made legal. The imposition of a fee provided a source of revenue for the company. The fee, called recognition, was the formal acknowledgement of using the WIC monopolies for legal private trade. The disputes which involved the WIC – with the VOC, Laurens Verpoorten and the Courland Company – show not only how the contracts worked, but what happened when the WIC believed the terms of a contract had been breached. The contract system applied not only to private merchants from the Republic, like Verpoorten, but was also used in the relationship between the WIC and (ostensibly) foreign competitors, the Courland Company. Through the contract system, the WIC leased out trade in its charter area. As this increased over time, the company became more of an administrative body for the collection of taxes and fees than an Atlantic trader.

Finally, monopoly cases taken together have illuminated conflict management strategies, specifically VOC conflict management and the role of the States General therein. Petitioning the States General and submitting to that body's decisions was a crucial part of how conflicts over charters and monopoly questions were managed in the early years of the seventeenth century. The States General mediated the relationship between the VOC and the Magellan Company until the 1610s, and in the mid-seventeenth century, the States General settled the dispute between the VOC and the WIC over Cape Town. But these two disputes followed different trajectories after the terms had been set by the States General: the VOC insisted that the former dispute was transferred to the legal arena and court proceedings followed in the High Court; the dispute with the WIC did not enter the courts.

This chapter has opened up issues of monopoly breaches and entrance into the VOC and WIC charter areas. The following chapter continues along this vein, but with a particular focus on those cases in which employees and non-employees, subjects of the States General and foreigners, were accused of illegal private trade.

3. Legal strategies, illegal trade

Conflicts over extradition and the proceeds of illegal private trade

The VOC and the WIC defined legality and illegality in trade based on their charters and the regulations which they issued in the Republic and overseas. What constituted illegality was constantly redefined, as, in the case of the VOC, company policy changed, and for the WIC, as the company reacted to internal and external attacks on its monopolies. Both companies allowed private trade but constrained the extent to which their employees could trade for their own accounts by goods, quantities, or routes. Thus, there was a distinction between illegal private trade and permitted private trade. Overstepping the bounds of permitted private trade could lead to criminal proceedings in company courts. This was, after all, a breach of the terms of engagement between employer – being the VOC and the WIC – and employee; it was a breach of the companies' monopolies. Why, then, did private trade related cases enter the courts in the Republic?

The cases which are examined in this chapter reveal the routes into the High Court that cases followed. How the cases came up from lower courts to the High Court will be traced through the sentences. What is clear from the court records is that the cases which were heard in the High Court were not the criminal proceedings by which the accused was pronounced innocent or guilty of illegal private trade. Rather, they were civil proceedings which were offshoots of the criminal cases. Three of the cases which are examined in this chapter ware about the payment of wages, insurance claims, and disputed inheritance respectively but all stemmed from the issue of illegal private trade conducted in the charter areas of the VOC and the WIC.

More than just the progression of civil disputes in the legal arena, the cases show that the courts and the VOC contested jurisdiction and competences of legal institutions. A pattern emerges from the VOC cases: company servants who had been accused of illegal private trade or corruption in Asia fled the jurisdiction of Batavia; their arrival in the Dutch Republic sparked conflicts over jurisdiction and competence of the courts in Holland. The VOC's legal strategy in these cases was to fight for extradition of the accused to Batavia. This, I argue, reveals the company's desire to manage conflict in-house, that is, in its own courts. The WIC did not pursue the same strategy. This was the consequence of the WIC's different legal framework in its charter area and WIC courts' relationship with the legal system in the Republic (Introduction and Chapter 1).

In addition to the matters of jurisdiction and competence which the cases highlight, this chapter will make specific contributions to scholarship on illegal private trade, corruption and smuggling. Firstly, the cases analysed here deepen understanding of the mechanisms of illegal private trade. In a recent special issue on smuggling, the editors, Karwan Fatah-Black and Matthias van Rossum, called for more research on the case-study level to bring these mechanisms to light.[1] Not only do the cases under examination here

[1] Fatah-Black and Rossum, "De Nederlandse smokkelhandel," 9.

reinforce the importance of complicity and collaboration, including inter-imperial connections, but they also show that those relationships broke down and betrayal could lead to prosecution.

Secondly, the court cases bear out Fatah-Black and van Rossum's point that merchants were not the only ones involved in illegal private trade: skippers, crews and officials played important roles too. Furthermore, those involved were company employees and non-employees, subjects of the States General and foreigners.[2] Strikingly, their involvement in illegal private trade did not preclude their use of financial instruments nor their use of the courts to defend their interests.

Finally, how do the illegal private trade related cases in the High Court reshape conceptions of the VOC and the WIC monopolies? One of the most obvious ways that individuals and their networks – company employees and non-employees, Dutchmen and foreigners – breached the monopolies of the companies was by conducting illegal private trade. That illegality was widespread in both companies is well-known. But not all private trade was illegal. Both the VOC and the WIC allowed private trade in certain goods, or limited quantities. Distinguishing permitted from illegal private trade is not always easy, because of the various areas in which illegality could occur, and the proliferation of regulations both in the Republic and overseas regarding trading on one's own account.

For decades, illegal private trade has been conceived as one of the contributors to both companies' collapse in the late eighteenth-century. From this point of view, neither company was able to stamp out the scourge of illegal private trade which company servants conducted at the expense of their employers, the VOC and the WIC.[3] Recently, scholars have nuanced the view of private trade, particularly in so far as the VOC opened its monopolies to its servants.[4] In line with this development, the first section of this chapter deals with the definition of private trade, smuggling and corruption and the regulations according to which the companies determined the limits of permitted private trade.

The court cases which are analysed in this chapter all stemmed from illegal private trade undertaken in the charter areas of the VOC and WIC. Sections two and three focus on cases involving the VOC. Section two delves into two illegal private trade cases in which the company servants involved used the same mechanism of smuggling, namely transhipping. The details of what they smuggled, and how, come to light in the cases which recount their illegal activities. Yet the off-shoot civil cases were very different: the case between Willem Toledo and the VOC revolved around whether or not Toledo should be

[2] Ibid., 7, 16.

[3] On the reasons for VOC decline, including illegal private trade see Els M. Jacobs, *Merchant in Asia: The trade of the Dutch East India Company during the eighteenth century* (Leiden: CNWS Publications, 2006), 6-9. Nierstrasz, *In the Shadow of the Company*, 73-78. On smugglers against the WIC see Heijer, *De geschiedenis van de WIC*, 136. Enthoven, "An assessment of Dutch Transatlantic commerce, 1585-1817."

[4] VOC: Nierstrasz, *In the Shadow of the Company*. Nierstrasz, *Rivalry for Trade*. WIC: Antunes, Post, and Salvado, "Het omzeilen van monopoliehandel." VOC, EIC and other companies: Maxine Berg et al., "Private trade and monopoly structures: The East India Companies and the commodity trade to Europe in the eighteenth century," in *Chartering Capitalism: Organizing markets, states and publics*, ed. Emily Erikson (Bingley: Emerald, 2015).

extradited to Batavia; the case which Jan Schull brought against the VOC was a claim for his wages to be paid. The case against Toledo in particular highlights the VOC's legal strategy by which the company tried to reinforce the jurisdiction of their court in Batavia. The case against Toledo was certainly not the only example of this approach to cases in the Republic – section three takes up the issue of jurisdictional disputes in the Republic which arose from cases related to illegal private trade and more broadly, to corruption.

In section four the focus shifts to the WIC and in particular to illegal private trade conducted on the West Coast of Africa. As mentioned, because of the different legal structures, WIC illegal private trade cases did not lead to the same contests over jurisdiction and competence in the courts in the Republic as VOC cases did. What the WIC cases bring to the fore are the mechanisms of smuggling, highlighting the centrality of cross-imperial cooperation. These findings are in line with the strong research current in Atlantic history which emphasises the connected nature of Atlantic activities behind the façade of 'national' empires.[5]

Taken together, the VOC and WIC cases confirm what historians have long known: that illegal private trade was ubiquitous in the charter areas of the VOC and the WIC. But more than that, the cases showcase mechanisms of smuggling – the networks that individuals used, the means by which they took on board or unloaded their illicit cargo, and what kinds of illicit cargo they transported. The importance of cooperation – and inter-imperial cooperation in particular – comes to the fore. The cases reveal differences in scale in illegal private trade between the Indian and Atlantic Oceans with the equipping of ships for smuggling in the Atlantic being a particularly WIC problem. On the other hand, the jurisdictional disputes in the Republic caused by private trade related cases were a specifically VOC issue. That extradition cases like those discussed in the following sections were specific to the VOC can be explained by the VOC's legal structure, set out in Figure 2 (Chapter 1).

Private trade in the Indian and Atlantic Oceans

Earlier I made the point that research on the VOC and the WIC has been quite separate, until recently. When it comes to scholarship on illegal trade activities in the charter areas, this divide is reinforced by the terms used: the two bodies of scholarship to some extent speak different languages. The terms private trade, corruption and smuggling are used by scholars, but how do these concepts relate to each other? The difference in language use in the scholarship on illegality in the Dutch empire obfuscates the similarities in mechanisms and strategies used by those involved in illegal activity. Conceptual clarity, and unity in language use will facilitate comparative research and empire-wide studies.

In the Indian Ocean context, illegality is conceived in the terms private trade and corruption, with private trade treated as corruption by many historians in light of the VOC

[5] Oostindie and Roitman, *Dutch Atlantic Connections*; Richard Drayton, "Masked Condominia: Pan-European collaboration in the History of Imperialism, c. 1500 to the present" (paper presented at the Transitions to Modernity Colloquium, Yale University, 24 September 2012).

attempts to enforce its monopolies.[6] Private trade here should be understood as trading for an account other than the companies. This is particularly clear in the terms used for illegal private trade, which were not only *verboden handel*, but also *particuliere handel.* The latter emphasises exactly the point that it was for an individual's account.[7] However, private trade was not all illegal, and thus a further distinction is paramount: permitted private trade and illegal private trade must be distinguished. The limits of legality in trade were defined by the VOC charters, *artikelbrieven*, instructions for fleets and company administrators, and local ordinances (*plakkaten*). Conceptually, illegal private trade and corruption overlap, but are not synonymous. Corruption among VOC employees – one of the causes of the company's decline, according to historians – encompassed activities including but not limited to illegal private trade. Femme Gaastra highlights the distinction between behaviours that would be considered corrupt today, but were perquisites of high-ranking positions in the seventeenth century. He notes that even when those differences are stripped away, there was embezzlement and fraud that contemporaries found unacceptable.[8]

The term which dominates scholarship on illegality in Atlantic trade is smuggling. In the WIC literature, excellent research has illuminated the scope of Zeeland smuggling as well as the role of the WIC in breaching the regulations of other empires.[9] Karwan Fatah-Black and Matthias van Rossum define smuggling as evading taxes, levies and limitations relating to the movement of goods.[10] Based on this definition, illegal private trade and smuggling are synonymous.

The legality of trade was defined by the VOC and the WIC on the basis of the charters granted them and the regulations which they issued both in the Republic and within their charter areas. But the companies were not the only ones defining legality and illegality: in the context of multiple empires involved in trade in the Indian and Atlantic Ocean, illegality was defined from multiple viewpoints. What was considered illegal within one imperial regulatory framework was permitted within another. This is particularly relevant in assessing the legality of activities undertaken by foreigners. VOC and WIC restrictions on trade applied to employees and non-employees, and subjects of the States General and foreigners at various points in time. This followed from the different types of monopolies which the companies held – 'national' monopolies which excluded all subjects of the States General, contrasted with 'universal' monopolies, generally those won by

[6] Berg et al., "Private trade and monopoly structures," 131-132.
[7] The court records of the case involving Jan Schull, discussed later in this chapter, include these two terms, used interchangeably. See NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *840* (1748), Geextendeerde sententie, scans 180, 182, 190, ff. 180r, 182r, 190r.
[8] Femme S. Gaastra, *Bewind en beleid bij de VOC, 1672-1702* (Zutphen: Walburg Pers, 1989), 90. Byapti Sur is currently conducting doctoral research on corruption amongst VOC servants in India. She argues that allegations of corruption were a political tool in disputes between different factions of company administrators overseas and in the Republic. https://www.universiteitleiden.nl/en/staffmembers/byapti-sur#tab-1 (accessed 2017-11-18).
[9] For instance: Paesie, "Lorrendrayen op Afrika." Klooster, "Inter-imperial smuggling in the Americas, 1600-1800."
[10] Fatah-Black and Rossum, "De Nederlandse smokkelhandel," 5.

conquest and based not on provisions from the States General but on treaties with foreign sovereigns, by which the companies prohibited all non-company trade.[11]

Within the regulatory frameworks of the VOC and the WIC, the distinction between permitted private trade and illegal private trade was crucial. Both companies allowed their servants to conduct private trade, which took a number of forms. Following the long-held maritime custom of *voering*, the Dutch East India Company permitted the men employed on company ships to take one or more chests (*scheepskisten*) with them on the Cape route.[12] The parameters of size, number and contents were set by the company in the *artikelbrief* under which company ships set sail. Initially, the allowances for permitted trade varied from chamber to chamber but, when the first general *artikelbrief* was issued in 1634, the rules were standardized. Private trade allowances were based on the shipboard hierarchy and applied across chambers.[13] This is seen clearly in the regulations for 1717-1743 which stipulated that a commander could take three chests and one sailor's chest on board for his own account; captains and merchants could take two of each; sailors, soldiers and carpenters could take only one chest; the cook and others of similarly low standing could take none. Different ranks could take drink chests (*kelders*) with them, and a specified number of pots.[14] The goods with which mariners chose to fill their chests could be sold for profit, bartered or exchanged, and given as gifts to cement contacts.

The regulations on the return journey were different because of the company's awareness of the temptation which faced its employees – bringing Asian goods back to the Republic for personal profit. Seamen were allowed to bring goods back to the Republic up to the value of three months' wages, thus following the pattern of differences according to rank. However, only certain goods were permitted. During the 1690s the company directors in the Republic, the Gentlemen Seventeen, decided that goods which brought in little profit for the VOC – including at that point tea and porcelain – could be brought back by seamen in any quantity but they had to pay the company freight charges. In 1750 the

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[11] Chris Nierstrasz introduced the idea of plural monopolies, distinguishing between three which the VOC held. These were the 'Dutch'monopoly, covering all Europe-Asia trade; the intra-Asian trade monopoly; and monopolies taken by conquest and agreed by foreign sovereigns. The first two were granted to the VOC by the States General, and Nierstrasz refers to them as 'national' monopolies. The third was global in scope and reliant on the VOC's capacity to enforce its will on competitors not limited to inhabitants of the Dutch Republic and people under the jurisdiction of the VOC. Nierstrasz, *In the Shadow of the Company*, 73-75. The concept has not been applied to the WIC explicitly but Antunes, Post and Salvado write of WIC monopolies, rather than a single monopoly. In contrast, Henk den Heijer tends to use the singular form. See Antunes, Post, and Salvado, "Het omzeilen van monopoliehandel."; Heijer, "The Dutch West India Company."

[12] Jan Lucassen, "Zeevarenden," in *Maritieme gescheidenis der Nederlanden*, ed. L. M. Akveld, S. Hart, and W. J. van Hoboken (Bussum: De Boer Maritiem, 1977), 142. Herman Ketting, *Leven, werk en rebellie aan boord van Oost-Indiëvaarders (1595-±1650)* (Amsterdam: Aksant, 2002), 55. Jan Lucassen and Matthias van Rossum, "Smokkelloon en zilverstromen: illegale export van edelmetaal via de VOC," *TSEG/Low Countries Journal of Social and Economic History* 13, no. 1 (2016): 127-128. Tijl Vanneste, "Sailing through the Strait: Seamen's professional trajectories from a segmented labour market in Holland to a fragmented Mediterranean," in *Law, Labour and Empire: Comparative perspectives on seafarers, c. 1500-1800*, ed. Maria Fusaro, et al. (Palgrave Macmillan, 2015), 135-136.

[13] Hoogenberk, *De rechtsvoorschriften*, 188. Roelof van Gelder and Lodewijk Wagenaar, *Sporen van de Compagnie: De VOC in Nederland* (Amsterdam: De Bataafsche Leeuw, 1988), 59.

[14] Berg et al., "Private trade and monopoly structures," Table A2. *Kelders* were chests into which 12 gin bottles fit.

number of permitted chests per seaman was revised and all goods were permitted, except for silk and goods which the company sold by weight, such as spices. But tea and tamarind, although sold by weight were permitted for private trade.[15] Nierstrasz has shown that the VOC's policies on private trade shifted over time as the company responded to increased competition from private traders and rival European trading companies and consequent market changes in Europe.[16]

In order to police private trade, the returning East Indiamen were inspected on their arrival in Texel before goods were unloaded from the ships. How exactly this played out was recounted in the case against Jan Schull, which features later in this chapter. The mariners' chests were unloaded from the ships, inspected, and stored in the company warehouses. Goods not considered merchandise – curiosities – could be collected by their owners; goods brought back illegally were confiscated and sold for the profit of the VOC. Unlike the English East India Company, the VOC sold off the goods brought back by its servants at its own auctions, with company goods. The proceeds of the sale, minus freight charges, were then handed over to the individual mariner-trader.[17] This protocol was intended to protect the company from being short-changed – the chests were inspected so that any non-permitted goods that were brought back to the Republic could be confiscated; and the company sold off the permitted trade goods so that seamen did not undercut the company's pricing.

While private trade was an opportunity to earn some money legally to supplement wages, it was also an opportunity for illegality which many utilised, as the cases which follow bring to light. It is in such cases that the intertwined nature of legal and illegal private trade is most obvious. According to Chris Nierstrasz, the VOC condoned some degree of illegal private trade. The company directors were not overly concerned with smuggling per se; rather, they were worried about the effects of overloading the return ships: heavy laden with company as well as private merchandise, the East Indiamen were difficult to manoeuvre in storms and attacks. [18] In this way, private trade, permitted and illegal, threatened company profits not only by increasing supply and lowering prices in the Republic, but by risking loss or capture of the entire cargo before it even reached the auctions.

Just as the legality of private trade on the Cape route changed over time, according to product and quantity, so too did private trade in intra-Asian shipping. According to the monopoly granted to the VOC by the States General, intra-Asian trade was the exclusive right of the company. The commonly-held view is that the VOC excluded its servants from this trade, in stark contrast to the English East India Company's policy on 'country trade'.[19]

[15] Gelder and Wagenaar, *Sporen van de Compagnie*, 59.
[16] Nierstrasz, *Rivalry for Trade*, 22, 76-81.
[17] Gelder and Wagenaar, *Sporen van de Compagnie*, 59. Nierstrasz, *Rivalry for Trade*, 29.
[18] Nierstrasz, *Rivalry for Trade*, 79-80.
[19] Hejeebu indicates that for decades the enduring narrative of private trade has been one of English East India Company failure to root out the problem. However, she concludes, that the EIC used private trade allowances as the carrot and being fired as the stick by which to secure the loyalty of its employees overseas. In contrast, she claims, the VOC attempted to monopolise intra-Asian trade for a long period of time, not allowing its

However, already in the 1970s, Sinnapah Arasaratnam showed that monopolising the intra-Asian trade was not an uncontested approach to company commerce in Asia. Yet conceptions of the VOC's position in and intentions for intra-Asian trade have been slow to change in the historiography.[20] Chris Nierstrasz's work is having that effect now: he has challenged the narrative of a weak company unable to eliminate illegal private trade and argues instead that the opening of the intra-Asian trade was part of considered policy changes in the company.[21]

In addition to permitted private trade, the VOC implemented recognition fees on goods sent to Europe over and above the permitted private trade of its servants. Nierstrasz's work on tea and textiles indicates recognition fees were charged by the company to both European and Asian merchants who sent such merchandise back to the Republic. The goods were then sold off at auction, greatly increasing the work of the auctioneers who claimed higher salaries as recognition trade increased (see Chapter 4). Nierstrasz claims that private trade in tea and textiles had been flourishing and the VOC implemented the recognition fee as a way to profit from private endeavours.[22] Here we see a parallel with the WIC, which also used recognition fees as a strategy to co-opt profits from private trade.

Like the VOC, the WIC was constituted by multiple monopolies. The WIC lost its grip over these monopolies, thus reshaping company activities from monopoly trade and colonisation at the outset to collector of levies and duties by the mid-eighteenth century.[23] Regulations regarding the legality and illegality of private trade were set out in the company's charters. As discussed in Chapter 2, even before the first charter was granted there were disagreements over the geographical reach and product scope of the monopoly. The first monopoly granted in 1621 gave the company a Dutch monopoly over trade in the Atlantic, covering routes and products. The only exception was salt shipping from the Caribbean which was in the hands of private traders from Hoorn and Enkhuizen for at least a year after the founding charter was issued.[24] The Dutch monopoly formed the legal basis on which the WIC could exclude all other merchants from the Republic from trade.[25] However, the company did not succeed in enforcing it. The WIC monopolies were undercut by private traders who equipped Atlantic voyages without company permission and without paying the requisite recognition fees for private trade.[26]

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servants to supplement their wages by private trading activities and thus not tapping into the synchronisations between company and private interests. Hejeebu, "Contract enforcement."

[20] Arasaratnam, "Monopoly and Free Trade." A recent contribution on differing visions of empire is Weststeijn, "The VOC as Company-State."

[21] Nierstrasz, *In the Shadow of the Company*, 3, 79-87.

[22] Nierstrasz, *Rivalry for Trade*, 28.

[23] For a concise overview of the history of the first and second WIC and the opening of the company's monopolies, see Heijer, "The Dutch West India Company," 77-112. Gert Oostindie and Jessica Roitman make the point that the WIC abandoned the idea of monopolising trade and governance early on and after giving up its monopoly on the slave trade the company's main economic activity was in fact collecting taxes. Oostindie and Roitman, "Repositioning the Dutch in the Atlantic, 1680-1800," 136.

[24] Heijer, "The Dutch West India Company," 81.

[25] The charter itself used the term inhabitants (*ingesetenen*). See Laet, *Iaerlijck Verhael*, 7.

[26] Enthoven and Postma, "Introduction," 2; Heijer, "The Dutch West India Company," 97; Wim Klooster, *Illicit Riches: Dutch trade in the Caribbean, 1648-1795* (Leiden: KITLV, 1998).

Over time, the company relinquished its monopolies over brazilwood, gold, and enslaved people and profited from private traders' activities by collecting recognition fees. Brazilwood was under company monopoly until at least 1645; from 1647 the trade was opened to private traders.[27] The gold trade was under company monopoly until the charter renewal of 1730.[28] Debate over the reduction of the company monopoly in the years leading up to the 1730 renewal will be discussed in more detail later in this chapter. The renewal of 1730 also instituted the recognition trade for the West Coast of Africa. Passports could be requested from the company chambers in the Republic, a guarantee paid upfront and then the recognition fee paid on completion of the voyage. The duration of the passport was set according to the request for a voyage to Africa and back to the Republic, or a triangular/trans-Atlantic voyage and holders were released from the payment of import and export taxes. Should the private merchants breach the terms of the trade, they were subject to a fine of *f*6000.[29] With the amendment to the charter in 1734 the monopoly of the WIC on the West Coast of Africa was essentially relinquished. Only the slave trade to the colonies in the Americas remained under the company, and that was only to last until 1739. After that point, the company kept up the forts and trading stations and acted as an intermediary in the trade in enslaved Africans.[30]

WIC ships sailed out under specific regulations and instructions set out in a general *artikelbrief*.[31] To date, no structured analysis of these legally binding documents has been done to assess the limits of permitted private trade, let alone a comparison with the details known for the VOC. It is, however, likely that sailors were permitted some space on board to carry goods for their own private trade, which would have been based on the maritime custom of *voering*, and which was allowed to VOC servants. Article Seven of the general *artikelbrief* for the WIC, dating from 1647, does not mention *voering* specifically but does prohibit company servants from carrying extra ship's chests on board without the permission of the directors. According to the regulation, extra chests would be confiscated by the company.[32] What was very clearly stated in the *artikelbrief* was that private trade by company servants was not allowed. Article 36 prohibited private trade by all company servants, of all ranks, for themselves or on behalf of other people. They risked being fired from company employ and forfeiting their wages for breaking the rules.[33]

Unlike the VOC's albeit incomplete attempts to monopolise the intra-Asian trade, the WIC did not have equivalent designs on the *kleine vaart*, the inter-Caribbean trade which included the Spanish American Mainland and later, the North American colonies

[27] Antunes, Post, and Salvado, "Het omzeilen van monopoliehandel," 44 (Table 43).
[28] Heijer, *Goud, ivoor en slaven*, 312.
[29] Paesie, "Lorrendrayen op Afrika," 80.
[30] Ibid., 84. Antunes, Post, and Salvado, "Het omzeilen van monopoliehandel," 44 (Table 43).
[31] Cau et al., *Groot Placaet-boeck*, III:1346-1354.
[32] Ibid., III:1347. Ruud Paesie has found evidence of permitted private trade – *voering* – for sailors on smuggling vessels: they were allowed to load some goods into the hold to trade in Africa. Paesie, "Lorrendrayen op Afrika," 136. He does not mention whether or not the WIC gave its employees similar allowances.
[33] Cau et al., *Groot Placaet-boeck*, III:1350.

too.[34] Recent research has shown the importance of inter-imperial trade in the Caribbean where territories belonging to different national empires were so close together and coastlines so difficult to patrol that smuggling abounded. As Wim Klooster so memorably stated, "Dutch Caribbean transit trade was largely an illicit affair. Smuggling was so important to the Dutch Antilles that it was almost their *raison d'etre*."[35] In this inter-imperial context it is important to consider legality and illegality from both parties' perspectives, an issue which reocurs in the court cases which are analysed later in this chapter. For instance, trade in enslaved people between the free Dutch port Curaçao and the Spanish Main and French colonies was legal from a Dutch point of view, but illegal from the point of view of the Spanish and French who should only have been purchasing slaves from traders within their own imperial framework.[36] St Eustatius was another such Dutch free port which thrived in inter-imperial trade.[37] But in other areas, specifically their plantation colonies, the Dutch tried to implement mercantilist policies. Gert Oostindie and Jessica Roitman make the point that this economic heterogeneity was a defining feature of the Dutch Atlantic empire: plantation colonies were governed by the principles of mercantilism, while Dutch free ports thrived on undermining the mercantilist policies of other empires. They make the point that the Dutch colonies were deeply embedded in Atlantic connections, more so because they could not rely on the company or the Republic for adequate protection or provisions.[38]

In addition to inter-imperial smuggling undermining mercantilist goals, there were two other forms of illegality in inter-Caribbean trade: tax evasion and trading with the enemy. On the first point, Cornelis Goslinga indicates that the Gentlemen 10 realised they could not control the inter-Caribbean trade – enforcing the WIC's charter-based rights was near impossible – and so "pursued a policy of connivance" by which they tolerated the trade provided the required fees were paid to the company and the monopolies on slaves and salt were kept intact. On the second point, Goslinga claims that the *kleine vaart* expanded during the War of Spanish Succession during which time "[t]rade with the

[34] Goslinga, *The Dutch in the Caribbean and in the Guianas*, 189-230. To be specific, the Spanish were only allowed to purchase enslaved people from the agents of the *Asientistas.* The *asientos* (slave supply contracts) were often held by non-Spaniards. Even if they involved foreigners, the *asientos* were part of the Spanish regulatory framework for the colonies.

[35] Klooster, *Illicit Riches*.

[36] Wim Klooster, "Curaçao as a transit center to the Spanish Main and French West Indies," in *Dutch Atlantic Connections, 1680-1800: Linking empires, bridging borders*, ed. Gert Oostindie and Jessica Vance Roitman (Leiden and Boston: Brill, 2014).

[37] In particular, slave trade via this island to the surrounding French and English islands thrived in the 1720s. Heijer, *De geschiedenis van de WIC*, 150, 157, 160, 181.

[38] Gert Oostindie and Jessica Vance Roitman, "Introduction," in *Dutch Atlantic Connections, 1600-1800: Linking empires, bridging borders*, ed. Gert Oostindie and Jessica Vance Roitman (Leiden and Boston: Brill, 2014), 71. This idea is most coherently expressed by Richard Drayton who argues that 'national' facades masked imperial interdependence. Drayton, "Masked Condominia: Pan-European collaboration in the History of Imperialism, c. 1500 to the present." On how inter-imperial, regional and Atlantic connections were crucial to the provisioning of colonies, and characterised the networks of individuals active in the colonies, see Hoonhout, "The West Indian Web."

enemy continued as if nothing had happened."[39] Goslinga sums up the effect of illegality in the inter-Caribbean trade thus:

> Monopolies, charters, navigation laws and other regulations tried in vain to eliminate [the *kleine vaart*], or at least keep it within the frame and dimensions of the Mercantilist System. In spite of all measures to counteract it, there is every evidence that the kleine vaart was a main cause of the decline and fall of monopolistic institutions and of the futility of protective restrictions.[40]

Unable to control the private trade in the Caribbean, and in some cases unwilling to because of the lack of provisions supplied to colonies by the WIC, the company directors and officials tried to co-opt some of the gains by imposing taxes and fees but still maintained their position of "connivance and duplicity".[41]

The VOC and WIC charters, *artikelbrieven* and special instructions defined and redefined legality in terms of quantity, product, area, route, and/or persons involved. These regulations applied to all company servants: seafarers, military personnel, administrators and officials. But employees in different 'branches' of the companies had different opportunities to exploit on the spectrum of illegality from petty to excessive. These opportunities were based on their locations, contacts, available credit, and entrepreneurial ingenuity. The possibilities ranged from small-scale smuggling of coins or sugar by sailors, to elite networks of officials involved in, for instance, illegal diamond trade, and the equipping of ships for illegal trading voyages.[42] Those who sailed from the Republic to Asia and across the Atlantic had opportunities to exploit which differed from the possibilities open to administrators and trade officials who lived in company ports and towns (semi-) permanently.

At the one end of the spectrum, illegal private trade was intertwined with legal trade. That is, illegal private trade was dependent on company infrastructure. This is what Karwan Fatah-Black and Matthias van Rossum have called endemic smuggling, which they define as parasitic on legal trade.[43] The epitome of this sort of illegality was taking extra chests on board a company ship, such as Jan Schull did, which case is discussed in greater detail later in this chapter. The concomitant permitted private trade was the *voering* allowance and the VOC recognition trade, both of which forms of trade were dependent on VOC infrastructure. At the opposite end of the spectrum of illegality was illegal private

[39] Goslinga, *The Dutch in the Caribbean and in the Guianas*, 190.
[40] Ibid., 189.
[41] Ibid., 197.
[42] For example, VOC sailors transported coins in their pockets: Lucassen and Rossum, "Smokkelloon en zilverstromen." WIC sailors carried Brazilian sugar in their shirts to sell in the Republic: Klooster, "De bootsgezellen van Brazilië," 49. Governor-General Maetsuycker's wife was involved in illegal diamond trade in India: Gaastra, *Bewind en beleid*, 120. On Zeeland smugglers see Paesie, "Lorrendrayen op Afrika." Heijer, *Goud, ivoor en slaven*, esp. Ch 8.
[43] Fatah-Black and Rossum, "De Nederlandse smokkelhandel," 17-18. They distinguish endemic smuggling from eruptive smuggling. Eruptive smuggling was the consequence of changing patterns of production, consumption, political power, or war.

trade conducted by merchants independent of company shipping. One example is the infamous *lorrendraaiers* (smugglers) who flouted the WIC monopoly and equipped ships for Atlantic trade, in particular in the trade in enslaved Africans. They are discussed later in this chapter too. That trade was not dependent on WIC shipping. The concomitant legal side of this was WIC recognition trade, which, in contrast to the VOC, gave merchants permission to send out their own ships to trade in the charter area against payment of a fee.[44] The striking difference that is revealed in the court cases which follow, is that illegal private trade in Asia was intertwined with legal private trade and company trade – relying on the VOC infrastructure of ships, shipping routes and access to markets – while illegal private trade in the Atlantic was constituted by equivalent illegal activity as well as the equipping of ships for voyages independent and in breach of the WIC monopolies.

In spite of the difficulties which the VOC and WIC faced in policing the ever-shifting boundaries between legal and illegal trade, the companies prosecuted employees, rivals and foreigners for breaking the rules of permitted private trade. The regulations set out the punishments for transgressors: the VOC punished illegal private trade conducted by its servants with confiscation of goods, forfeiture of wages, and demotion.[45] But in the context of multitudes of participants, trade routes, and regulations, which courts had jurisdiction over such issues? In the following sections, detailed accounts of illegal private trade and who conducted it come to light in the High Court archive, bringing to the fore the mechanisms of smuggling, the problems of jurisdiction in prosecuting the crimes and related civil cases, and revealing significant differences between how the VOC's and the WIC's monopolies were breached by illegality.

Transhipping on the Europe-Asia route

The following cases bring to light a specific mechanism of illegal private trade, namely transhipping. This involved a rendezvous at sea during which goods were loaded onto or unloaded from a vessel by another ship which came alongside it. For Dutch East and West India Company employees, transhipping allowed men to conduct their business beyond the watchful eye of company inspectors. However, there were always accomplices and witnesses whose silence was crucial to success. The two cases which follow bring to light the way that company employees went about conducting illegal private trade alongside the company's trade, making use of the existing infrastructure – ships, routes – to profit themselves. These cases are examples of what Fatah-Black and van Rossum call endemic smuggling. The men involved in transhipping were found out and prosecuted for illegal private trade, one in Batavia and one in the Republic. But they both ended up facing civil legal proceedings in the High Court in the Republic. Each case is discussed in detail here,

[44] It was of course dependent to some extent on WIC infrastructure in that, when conducted legally, ships should have called at WIC-controlled ports. See Chapter 2 for disputes over WIC recognition trade.
[45] Article 65 of 1643 *Artikelbrief* published in J. A. van der Chijs, ed. *Nederlandsch-Indisch Plakkaatboek, 1602-1811*, 17 vols. (Batavia and The Hague: Landsdrukkerij and Martinus Nijhoff, 1885), I: 330. See also Hoogenberk, *De rechtsvoorschriften*, 207-208.

including the mechanisms of smuggling as well as the nature of the case heard in the High Court.

Spiriting goods to Batavia: Willem Toledo vs. VOC chamber Amsterdam

Willem Toledo was a man who had made his way up the ranks of shipboard personnel during his years in VOC employ. From the time he was eight years old, so he claimed, he had taken up different functions in the company, reaching the position of skipper (*schipper*) in 1674.[46] It was in November of that year that he sailed out of Texel on board the large ship *Sumatra*, of which he, as skipper, was the highest official.[47] On arrival in Batavia the following year, Toledo was given orders to board a different ship, presumably meaning he worked in the intra-Asian trade for a few years. He claimed that he served the company well at all times and did not speak ill of it.[48] In 1677, while Toledo was still in Asia, the *Advocaat Fiscaal* laid a criminal charge against him before the Council of Justice in Batavia – the allegation was illegal private trade on the journey to Asia.[49] Over the following decades Toledo and the VOC were engaged in legal proceedings that spanned the Indian Ocean. From the point of view of individual agency, the case brings to the fore the mechanisms of Toledo's illegal activity and the importance of collaboration in his trade and escape to the Republic. The same matter continued in the judicial institutions in Holland during which time the political bodies – the States of Holland and the States General – weighed in. The High Court's jurisdiction and competence were challenged by the VOC which claimed repeatedly that Toledo should be sent to Batavia to face the sentence passed by the company's court. In this way, the VOC fought to keep the case in-house. The implication of this was that the company was trying to uphold and reinforce the jurisdiction of its own court, the Council of Justice in Batavia.

Toledo was accused of collaborating with English ships to load alcohol onto the *Sumatra*. He transported the drinks to Batavia, where he sold them and pocketed the profit. The *Sumatra* sailed out of Texel with an unnamed English ship. While both were out in the Channel, brandy, French wine and high-quality beer called *Mom* were

[46] Strangely, Willem Toledo cannot be traced in the database of company employees – VOC opvarenden. The first voyage by a ship named *Sumatra* of which personnel are recorded in the database is from 1680.

[47] This comes to light in the court proceedings between Toledo and the VOC in the High Court. Nationaal Archief, Den Haag, Hoge Raad van Holland en Zeeland, nummer toegang 3.03.02, inventarisnummer *785* (1693), Geextendeerde sententie, ff. 113r-v, scan 114-5. According to the database of VOC ships this was in fact the first voyage that the ship made to Batavia. It was in use by the company until it was sold in Batavia in 1691. The vessel would have carried 225-70 persons on board. http://www.vocsite.nl/schepen/detail.html?id=11010 (accessed 2016-02-03).

[48] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693) Geextendeerde Sententie ff. 113v, scan 115.

[49] Heer Pauw was Advocate Fiscaal until August, when Mr Gualter Zeeman was appointed to the position. Francois Valentijn, *Oud en Nieuw Oost-Indiën, vervattende een naauwkeurige en uitvoerige verhandelinge van Nederlands mogentheyd in de gewesten...* 8 vols. (Dordrecht and Amsterdam: Johannes van Braam and Gerard Onder de Linden, 1724-6), III: 306, 385. The High Court records are not explicit about it, but it seems that there were a number of other officials accused at the same time. These were men on board the *Sumatra* and *'t Wapen van Alkmaar.* NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693), Geextendeerde sententie, scan 115 f. 114r.

transferred aboard the *Sumatra.* While no quantities were specified, the court records stated at various points that the amounts were considerable. According to the VOC, Toledo was not satisfied to do this only once but executed a number of such transhipments while in the Channel.[50]

The case against Toledo highlighted not only the how and what of Toledo's illegal trade, but the VOC revealed how the directors came to know of Toledo's misdeeds and their response. While Toledo stayed in Asia, the *Sumatra* returned to the Republic, arriving in Texel on 16 July 1676.[51] One of the men on board must have then denounced Toledo to the company directors.[52] That a fellow seafarer would know about Toledo's activities on the voyage to Batavia is hardly surprising; transhipping goods in the Channel could not possibly have been done without at least the notice – if not physical assistance – of officers and crew. Perhaps Toledo, as skipper, could buy their silence in return for a small share of the profit? Whatever ensured the secrecy of others was not sufficient to keep the informant quiet. Perhaps the reward offered for such denunciations, specified in the *artikelbrief*, convinced the anonymous seafarer to turn in Toledo.[53] The directors then collected evidence and sent instructions to the authorities in Batavia to begin criminal proceedings against Toledo, which instructions were received and carried out in 1677, some three years after the transhipping in the Channel.[54]

It is quite possible that the vessel which carried the evidence against Toledo was the same one that carried Volckert van Goens to Batavia. Like Toledo, he too was accused of loading beer and wine onto the company ship in the Channel and selling it off in Batavia.[55] An indication that transhipping goods in the Channel was a concern to the VOC was the States of Holland Resolution (1680) which mentioned the risks it posed to company ships. The resolution gave the example of a ship which was seized by the 'Turks' and forced to go to Algiers. It was vulnerable to capture, according to the company, because of the rendezvous with other ships in the Channel.[56] Transhipping as a tactic for smuggling was also used beyond the Channel: according to Piet Emmer, the Dutch

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[50] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693) Geextendeerde Sententie, f. 113v, scan 115; ff. 119r-v, scan 120-1. The records include the interesting detail that the brandy was contained in *flessenkelders* – porcelain bottles in a wooden box.

[51] VOCsite http://www.vocsite.nl/schepen/detail.html?id=11010 *Sumatra* (accessed 2017-11-18).

[52] The company indicates that the directors came to know about Toledo's transhipping only when the Sumatra returned to the Republic. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693), Geextendeerde Sententie, f. 120r, scan 121.

[53] *Artikelbrief van de geoctroyeerde Nederlandsche Oost-Indische Compagnie* dated 3 September 1672 published in Chijs, *Nederlandsch-Indisch Plakkaatboek*, III: 560-561.

[54] Cau et al., *Groot Placaet-boeck*, VII:961. Resolutie, Staten van Holland. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693), Geextendeerde Sententie, f. 114r, scan 115; f. 120r, scan 121.

[55] Nationaal Archief, Den Haag, Familie Archief van Goens, toegang nummer 1.10.32, Inventaris nummer *31*. Extract en resolutie in de zaak van V. v. Goens enz. 7 Feb 1681. Thanks to Erik Odegard for bringing this to my attention and generously sharing his transcription of the original. I have found five ships in the vocopvarenden database which arrived in Batavia in 1677. One of them is *'t Wapen van Alkmaar*, and another is the *Sumatra* on her second voyage. So while it is possible, it is at most a 1 in 5 chance. The database may not be complete.

[56] Cau et al., *Groot Placaet-boeck*, VII:962. Resolutie, Staten van Holland. The ships are not named in the resolution. In 1730 there were two ships, *Purmerlust* and *ter Horst,* which were seized and taken to Algiers. The court case which arose regarding the wages of the crew is discussed in Chapter 4.

transhipped Brazilian goods in the South Atlantic in order to evade Spanish and Portuguese monopolies.[57]

In addition to collaborating with the English in the Channel to tranship the drinks, Toledo was reliant on the English for assistance in returning to the Republic. At some point during the legal proceedings in Batavia Toledo fled to Bantam where he boarded an English ship and sailed to England. In theory no line of appeal existed from the court in Batavia to the courts in the Republic, thus flight was the only option to avoid punishment. To prevent this, the directors had instructed the officials in Batavia to imprison Toledo because the company was convinced that should Toledo make his way back to Europe, he would have no difficulty in finding employment in other nations' companies and thus end up serving the VOC's rivals in Asia.[58] However, from England Toledo returned to the Republic.[59]

Despite Toledo's escape, the *Fiscaal* in Batavia continued the case: Toledo was sentenced *in absentia* on 27 May 1678. He was dismissed from his position (*gedeporteert van ampt*) and declared useless to the company; his wages were forfeited; he was banished to the island Rosengein (Banda Islands) for a period of 20 years; and he had to pay a fine (*amende*) of the significant sum of 1000 *Rijksdaalders*.[60] These punishments were in line with the general *artikelbrief,* from 1672, which prohibited transhipping in the Channel.[61]

The general *artikelbrieven* under which VOC ships sailed had always prohibited company vessels from allowing ships to come alongside them and detailed the punishments for those who disobeyed. Article 24 of the first general *artikelbrief* (1634) specified that no-one was permitted to allow English and French vessels to come alongside company ships; or to have people from those countries on board with the exception of sailors; nor to show any of the return cargo to such people before the directors had come on board and made sure that everything was in good order. The penalty for flouting the regulation was seizure of half the wages owed to the man in question.[62] The article was reworded slightly in the 1658 version – the notable change was that England and France were omitted in favour of a more general prohibition.[63] The

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[57] Piet C. Emmer, *De Nederlandse slavenhandel, 1500-1850* (Amsterdam: De Arbeiderspers, 2003), 39.

[58] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693) Geextendeerde Sententie, ff. 114r scan 115. It was stated in the plural, indicating that Toledo was one of a number of officials who had been accused and who should have been imprisoned to prevent their flight to Europe. As discussed in Chapter 1, charter Article 35 allowed high-ranking officials to seek redress in the Republic.

[59] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693), Geextendeerde sententie, scans 122-3, ff. 121r-v. Cau et al., *Groot Placaet-boeck*, VII:961. Resolutie, Staten van Holland.

[60] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693), f. 113v, scan 115. It is later specified that the island is Rosengein, known today as Pulau Rozengain. See also ibid. Resolutie, Staten van Holland. 1000 *Rijskdaalders* = *f*2400 in Asia based on the conversion of 1 *Rijksdaalder* =48 *stuivers.*

[61] Chijs, *Nederlandsch-Indisch Plakkaatboek*, II: 560-561. 3 September 1672 'Artikel-brief van de geoctroyeerde Nederlandsche Oost-Indische Compagnie'.

[62] Ibid., I:315-316. 2 Maart 1634 'Artikel-brief voor de Oost-Indische Compagnie'.

[63] *Historiesch verhaal, van het begin, den voortgang, en den tegenwoordigen staat des koophandels, van de Generaale Nederlandsche Geoctroyeerde Oost-Indische Compagnie*, (Arnhem: Wouter Troost, 1772), II:435. 'Articulen en ordonnatien…' (1658) Article XXIV.

general *artikelbrief* issued in 1672 included an amendment to Article 24 by which the prohibitions encompassed the outward journey. The 1672 amendment stated:

> And also no-one on the outward journey... wherever [the ship] may be... would be allowed to let any ships, boats or people come aboard, even less to take onboard any persons, letters or goods in vats, packets, money box, chest or whatsoever it may be in, under any appearance, cover or pretext, overtly or covertly, in any manner, not only on the pain of being made redundant, but moreover payment of a fine of 1000 Carolus guilders.[64]

It is worth noting that in trying to combat the problem of transhipping, half of the fine was offered to the person who denounced the illegal activity.[65] A reward of *f*500 Carolus would have been a significant sum for an ordinary sailor (*matroos*), amounting to almost four times his yearly salary.[66]

While the *artikelbrief* was the grounds for bringing charges against Toledo and finding him guilty in Batavia, the matter that arose in the courts in the Republic was extradition. Toledo, who had escaped before he was sentenced in Batavia, was arrested when he returned to Amsterdam, based on the directors' knowledge that he had deserted.[67] The Gentlemen Seventeen then sought permission from the Amsterdam Aldermen (*Schepenen*) to send Toledo back to Batavia on the very next ship so that the sentence passed by the Council of Justice there could be executed. The *Schepenen* granted permission to transport him. Toledo disputed the ruling in the Court of Holland which concluded that it was not competent (*bevoegd*) to make a decision in the case. Toledo later appealed to the High Court where the parties debated the issue of transportation. The VOC claimed that the case belonged under the authority of the Provincial States of Holland which had dealt with a similar case against Johannes Middag in December 1673.[68]

Johannes Middag stood at the centre of an extradition dispute in the Republic. The VOC accused Middag of traitorous activities, in particular, having collaborated with none other than former VOC Director-General in Batavia, alleged illegal private trader, and then French East India Company director, François Caron. The VOC alleged that Middag had left his post in Asia without company permission and had made his way back to the Republic where he was preparing to enter the French Company's service. The VOC

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[64] Original: *"Ende en sal oock niemandt in het uytzeylen ofte oock buyten de uytterste ton of anders buyten gaets of elders in zee, waer het oock soude mogen wesen, buyten ordre of consent van de Bewinthebberen, vermogen eenige schepen, schuyten of volck aen boordt te laten komen, veel min over te nemen eenige persoonen, brieven of goederen in vaten, packen, kassen, kisten of waer in het oock soude mogen wesen, oock onder wat schyn, decksel of praetext het soude mogen geschieden, opentlyck noch bedecktelyck in eenigerhande manieren, niet alleen op peene van ghedeporteert te worden van syne bedieninge, ende daer en boven verbeuren een amende van duysent Caroli gulden."*Chijs, *Nederlandsch-Indisch Plakkaatboek*, II: 560-561. 3 September 1672 'Artikel-brief van de geoctroyeerde Nederlandsche Oost-Indische Compagnie'.

[65] Ibid., II:560-561. 3 September 1672 'Artikel-brief van de geoctroyeerde Nederlandsche Oost-Indische Compagnie'.

[66] According to Lucassen, a VOC sailor (*matroos*) would have earned *f*7-11 per month in the seventeenth century. Lucassen, "Zeevarenden," 141.

[67] Cau et al., *Groot Placaet-boeck*, VII:961-962. Resolutie, Staten van Holland .

[68] Original: *"behoorde te worden gebracht in de schoot van Haar Edele Groot Mog*[*ende*]" ibid., VII: 962. Resolutie, Staten van Holland. 11 May 1680.

directors had sought and gained permission from the court in Amsterdam to arrest Middag, and send him to Batavia on the next ship in order that he stand trial there. Middag disputed that he had done anything warranting civil let alone criminal proceedings against him in Asia. He claimed that he was a citizen (*burger*) of The Hague and he was a subject only of the jurisdiction of the Aldermen in that city. The dispute was recounted in a resolution of the States of Holland which confirmed the court's decision to allow the VOC to extradite Middag to Batavia.[69]

Considering the States of Holland's support for the VOC's argument for extradition, it is not surprising that in the later Toledo case, the VOC argued that the States of Holland should make the decision. In the States, the company believed it had an ally in upholding the company's court structure – that is, by extraditing accused company servants, the jurisdiction of Batavia was reinforced, disputes were kept in-house and the insulated nature of the VOC legal system as discussed in Chapter 1, was respected. However, the decisions made in the Middag and Toledo cases did not prevent the issue of extradition from arising in the following years. Jurisdictional disputes arose in the eighteenth-century, not least of all the high-profile case involving Frans Canter, former VOC *resident* in Bassoura.[70] The jurisdictional disputes between the Court of Holland and the High Court which were central to the Canter case will be discussed in greater detail later in this chapter.

The pattern that emerges from the cases is the VOC's insistence on sending its servants back to Asia to face justice in the company's courts. In the case against Toledo, the VOC was adamant that Toledo should be sent to Batavia to serve out his sentence for illegal private trade. It is understandable that the company wanted to keep issues within the jurisdiction of their own court. In this, the company sided with the Amsterdam court and its verdict which was in line with company wishes. What the company sought to do was to maintain the separation between the company court's and the legal arena in the Republic, which were in theory separate. Unsurprisingly, Toledo did not wish to return to Batavia to face his sentence of banishment. The case dragged on to the point of irrelevance: when the High Court finally passed a sentence, in 1693, Toledo was deceased. As a result, the judges commented that the question of transportation was no longer significant.[71] The problem of whether or not to extradite VOC servants to stand trial in Batavia remained unresolved.

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[69] Ibid., VII: 956. Resolutie, Staten van Holland. 22 December 1673. The resolution indicates that the States of Holland and the court had been in contact via letter. It does not state which court this was exactly, but it must have been the court in Amsterdam (*Gerechte van Amsterdam*) considering the argument that Middag made regarding being a burger in The Hague. That argument would not have been relevant had a court in The Hague made the decision in favour of extradition.

[70] Gelder, "De kas van de compagnie." *Resident* was the title given to the VOC's man in charge in company outposts (*buitengewesten*), places which were considered less important in the network of VOC ports and towns. For organisation and hierarchy of VOC personnel: https://www.vocsite.nl/geschiedenis/orgschema.html (accessed 2017-11-18).

[71] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *785* (1693), f. 127r, scan 128.

Jan Schull vs. VOC Chamber Amsterdam

From the route between the Republic and Batavia, we now turn to shipping between Canton and the Republic. In the late 1720s trade between the Republic and China was undergoing changes. While previously, trade with Canton was conducted via Batavia, a direct trade was established in 1729.[72] By the time Jan Schull was appointed skipper (*schipper*) of the first direct voyage to Canton, he already had decades of experience sailing to Batavia and Ceylon for the Amsterdam chamber of the VOC.[73] Likely a trusted employee by that time, he was entrusted with the command of the *Coxhorn* which sailed to Canton, spent five months there and then returned to the Republic, arriving in July 1730.[74] In January 1732 Schull was once again on the VOC Chamber Amsterdam's books: he was recorded as the supercargo on board the newly built *Knappenhoff* which was sailing to Canton under the command of skipper Pieter Verley.[75] Schull earned a handsome salary of *f*150 per month in this position.[76] This voyage was to be his last. On arrival in the Republic Schull was accused and found guilty of committing illegal private trade on the return journey.

The case between Schull and the VOC reveals mechanisms of smuggling goods from overseas into Amsterdam and how Schull went about evading the company's smuggling-prevention techniques for the return fleets. But the case in the High Court was not a criminal case against Schull for private trade – he claimed his wages from the chamber, and the return of chests which he brought back as his private trade allowance, that is, legal private trade. It is clear that having been convicted of illegality did not preclude Schull from using the courts to make his audacious claim against the VOC.

According to the company, Jan Schull grossly contravened the limits of permitted private trade on the voyage from China to the Republic. In this way, he caused great damage to the company. Schull allegedly transported three kinds of goods from Asia on board the *Knappenhoff* and disposed of them in two ways. The goods mentioned were silk, porcelain and tea. The quantity of tea was not given, but Schull allegedly transported 25 chests packed with silks and three chests containing over 2000 pieces of porcelain. It is clear from the sentence that this did not comprise Schull's entire quantity of merchandise

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[72] Els M. Jacobs, *In Pursuit of Pepper and Tea: The story of the Dutch East India Company* (Zutphen: Walberg Pers, 1991), 85; Nierstrasz, *Rivalry for Trade*, 60.

[73] Jan Schull's first voyage was in 1710, at which point he must have been a teenager. http://www.gahetna.nl/collectie/index/nt00444/d9eb4d82-c864-11e6-9d8b-00505693001d/view/NT00444_OPVARENDEN/sort_column/prs_voornamen/sort_type/asc/q/zoekterm/jan%20schul/q/periode_van/1709/q/periode_tot/1760/q/comments/1 (accessed 2017-11-18).

[74] http://www.vocsite.nl/schepen/detail.html?id=10227 (accessed 2015-10-19). The *Buren* which had been delayed at Texel due to frost was supposed to accompany the *Coxhorn* to China. However, the ship sank in a storm at Noorderhaaks, just off Texel. Of the crew, 43 were saved. The cargo of specie (*muntgeld*) was lost. http://www.vocsite.nl/schepen/detail.html?id=10188 (accessed 2015-11-08). The record of Schull's position on the *Coxhorn*: http://www.gahetna.nl/collectie/index/nt00444/caad6972-c864-11e6-9d8b-00505693001d/view/NT00444_OPVARENDEN/sort_column/prs_voornamen/sort_type/asc/q/zoekterm/schull/q/periode_van/1709/q/periode_tot/1760/q/comments/1 (accessed 2017-11-18).

[75] http://www.vocsite.nl/schepen/detail.html?id=10552 (accessed 2015-10-19). For Pieter Verley/Verleij's details see http://www.gahetna.nl/collectie/index/nt00444/ca8862bc-c864-11e6-9d8b-00505693001d/view/NT00444_OPVARENDEN/q/zoekterm/verleij/q/comments/1 (accessed 2017-12-01).

[76] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *675,* unpaginated, scan 88.

transported on his own account, indicating that he had had more than 28 chests loaded onto the *Knappenhoff* in Canton.[77] Surely this is not something that he could have done alone, and not without the notice of other officers on board, which raises the issue of who was complicit. He must also have had assistance when the *Knappenhoff* stopped at the Cape of Good Hope on the return journey. At the Cape, Schull allegedly had "a large quantity of goods and merchandise" unloaded from the ship and then, presumably, sold in the city.[78] It is quite possible that selling off goods at the Cape was a common strategy. It is tempting to consider whether or not Schull had cultivated contacts at the Cape on his previous visits to whom he could supply the illicit Asian merchandise. The sentence was not concerned with the mechanisms of the trade at the Cape, but that it took place.

Schull's second opportunity to unload merchandise came when the *Knappenhoff* was just off the island of Texel. Schull had used various devious means, so the company said, to plan a meeting between the *Knappenhoff* and small lighters onto which goods could be unloaded. The lighters would then transport the goods before they could be inspected by the Amsterdam directors. The sentence states:

> By requests, promises, gifts, threats and violence, and as such in all sorts of improper ways he had planned that two vessels or lighters would come aboard the Knappenhoff at ungodly hours out of which [the lighters] would be fully loaded, in such a strictly forbidden and improper way he [Schull] had all the aforementioned important goods and merchandise transported ... and with the help and assistance of other miscreant persons and accomplices had robbed the company.[79]

In this way Schull managed to avoid the usual protocol followed by the directors who would come on board to inspect all the goods, have the chests unloaded and transported to the warehouse, and then allow the owners to collect their personal belongings. As mentioned, Asian commodities such as tea and porcelain would be sold by the company but for the profit of the company employee who had brought them back.[80]

Private trade of this nature contravened the company regulations in a number of ways – the merchandise, the quantity, and unloading goods before reaching the destination. To make their arguments, the company measured Schull's behaviour against the legally binding contracts made between the chamber and its employee. The *artikelbrief* under which he sailed to China was referred to at length, with various articles cited on the limits and consequences of private trade. In addition to the *artikelbrief*,

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[77] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 182r, 185v.
[78] Original: "*een grooten menigte van goederen en Coopmanschappen*". NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 182r.
[79] Original: *"door versoeken, beloften, giften, dreijgementen en gewelt, en sulx op allerlij ondeugende manieren soo wel hadde uijtgewerkt, dat twee vaartuijgen off ligters des nagts ende bij ontijen aen boort van 't voors. schip Knappenhoff, waaren gekomen, en met goederen daer uijt volladen van daer gevaaren waren, sulx hij op die soo scherp verbooden en ondeugdende wijse alle de gem. importante goederen en coopmanschappen in der imptn. voors. schip meede gebragt, met hulp en assistentie van andere ondeugende persoonen en meede complicen de Compe. ontvoert hadde gehadt, of laten ontvoeren."* NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 182v.
[80] Gelder and Wagenaar, *Sporen van de Compagnie*, 59.

regulations passed by the Gentlemen Seventeen were mentioned regarding private trade.[81]

Despite the fact that Jan Schull had signed the *artikelbrief* himself and made an oath to adhere to it – and even been entrusted with the task of making sure that others on board the *Knappenhoff* followed its articles – he had severely damaged the company's interest by indulging himself in illegal private trade. According to the VOC's view recorded in the sentence, Schull had disregarded "all honour, loyalty, duty and his oath" while in China, where he committed "very grave crimes, such as cheating, lies, corruption, threats, violence and other heinous practices" which greatly damaged the company. He was accused of only pursuing his own "interest and advantage through excessive forbidden trade."[82] How the VOC found out about Schull's actions remains a mystery. As in the case against Toledo discussed above, it may have been one of the crew members who witnessed or heard about the illegal activity who gave Schull up. Schull's actions did reach the ears of the VOC directors in Amsterdam and proof found its way into the hands of the legal authorities in Amsterdam. The *hoofdofficier* of Amsterdam charged Jan Schull in a criminal case in 1733.[83] But Schull did not appear for his court date nor subsequent hearings; on his return from China Schull had fled and was thus a fugitive. He was sentenced *in absentia* on 1 June 1734. His sentence was forfeiture of his substantial wages and banishment, with the proviso that if he breached the terms of his banishment he would be punished severely.[84] Toledo's sentence passed in Batavia was similar, despite the fact that banishment was not specified in the *artikelbrief* as the punishment for illegal private trade. The Amsterdam sentence against Schull established his guilt in committing illegal private trade. The guilty verdict did not deter Schull from beginning legal proceedings against the VOC in the subsequent years, in which suit he claimed payment of his wages and return of his three chests from permitted private trade.

At the time of this case Schull was residing in Utrecht. Having been banished from Holland, Schull could not appear in the courts in Holland himself, thus the case he brought against the chamber Amsterdam was conducted by Gerrit van de Graas, to whom Schull had given power of attorney. He claimed three closed chests (*gesloten kisten*) and ships bedding (*een kooij*) as well as the goods packed inside them.[85] The surprise here is that van de Graas did not oppose the court's judgment of Schull's guilt – rather, out of the apparently vast array of illegal actions, van de Graas persisted that three of the chests were legal, constituting permitted private trade by the supercargo. These chests had been branded with the mark J. S. and nailed shut. According to the sentence, they contained

[81] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *675*, Resolutie, scan 88; NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 185v.

[82] Original: "*alle eer, trouw, pligt, en gedaane eed veragtende en met de voet schoppende*", "*op seer ondeugende en strafwaardige wijse en manieren schuldig hadde gemaakt, aen verscheijde seer groove misdaden, als aan bedriegerijen, falsiteijten, corruptien, bedreiginge, gewelt en andere snoode practicque*", "*sijn eijgen ongeoorlooft intrest en voordeel door een excessive verboden handel alleen behartigt*". NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 182r.

[83] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, ff. 178r-v.

[84] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 178v.

[85] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 178v.

pieces of porcelain – over 2000 pieces – as well as tea.[86] Both of these commodities were allowed to be traded privately by company employees but of course, there were limitations on the amounts. Jan Schull was only allowed to bring three chests back to the Republic and the goods within valued at up to three month's wages, in his case *f*450. In addition to claiming the chest and *kooijgoed*, Schull's representative disputed the forfeiture of his wages. The VOC opposed these claims.

The case progressed from the Amsterdam court to the Provincial Court and finally to the High Court. From the High Court's summary sentence it seems that the Amsterdam court sentence, dated 1737, declared Schull's wages forfeited but awarded him his three chests and bedding. The chamber must then have appealed the sentence in so far as it pertained to the chests and *kooij* in the Court of Holland. In 1744 the VOC received a favourable verdict: the Court of Holland overturned the Amsterdam sentence and denied Schull the goods. On appeal in the High Court the judges overturned the provincial court's sentence in so far as it had overturned the Amsterdam sentence – that is, Schull's claim to the chests and *kooij* was awarded, but the High Court confirmed the Amsterdam court's decision that Schull's wages be forfeited. The High Court judges who passed the 1748 sentence – Mollerus, Keetlaar, Pauw, van Nispen, van Santheuvel, Dierkens, van Ruster, Alewijn and the president, van Hees – discussed whether to follow the letter or principle of the law. On the one side, it was argued that the regulations regarding goods that could be transported by company employees were only specified for the journey to China, and not on the return. In opposition to this, it was argued that the regulations were intended to control private trade and thus had to be considered equally valid for the return journey. The judges were not unanimous in their interpretation of the articles regarding private trade. According to van Nispen, there was no article which allowed the company to seize permitted private trade goods in the case of unpermitted goods being unloaded from the ship without permission. In the end, the president concluded that Schull's wages had been rightfully withheld by the VOC; that the reason for the regulation regarding private trade was the prevention of fraud and thus to preserve that intention, the regulation was valid for both the outward and return journey. The judges' musings in the resolution to the sentence highlight the importance of interpreting the law, and establishing an understanding of the law at a time when direct trade with China was a novelty.[87]

Unlike in the case against Toledo, the Amsterdam Chamber did not dispute the competence of the court to deal with the case nor seek permission from the court to transport Schull to Batavia to face legal proceedings there. Batavia as the company rendezvous in the Indian Ocean no longer played a role in the trade with China of which Jan Schull was a first participant. Schull's career in the Amsterdam chamber spanned decades and while we may suspect his illegal private trading did too, it was the quantities of tea, silk and porcelain that he brought back from Canton that ended his career. As in the previous case against Toledo, legal and illegal trade were intertwined: both men made use of company infrastructure, and the opportunities of company employ to conduct trade for

[86] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *840*, Geextendeerde sententie, f. 185v.
[87] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *919,* Register der dictums...geresolveerd, scans 116-7; inv. nr. *675,* Resoluties, scans 88-9.

their own profit beyond what was permitted. And in both cases, the *artikelbrief* played a central role in the courts.

Contesting competence: The VOC's strategy

By virtue of its charter, regulations and *artikelbrieven*, the Dutch East India Company prosecuted its servants for corruption, including illegal private trade, in company courts. In Chapter 1 I argued that the VOC's legal system was insulated by virtue of the fact that cases could be appealed from company courts to the Council of Justice in Batavia, but there was no line of appeal to courts in the Republic (Figure 2). In practice, off shoots of corruption and illegal private trade cases were heard in the courts in the Republic. This has already been seen in the Toledo and Middag disputes, discussed earlier in this chapter. The resolutions made by the States of Holland and the rulings by the courts in The Hague in those disputes did not put an end to jurisdictional contestations. VOC servants continued to escape the jurisdiction of the company's own legal system and arrive in the Republic, where the VOC insisted that they be extradited. Which institution had the competence to rule on extradition was contested between the courts. A reocurring strategy used by the VOC in such cases was submission of an exception (*exceptie*) of incompetence and request that a case or litigants be transferred to a different court (*renvoij*), specifically to the Council of Justice in Batavia. In such episodes, the company's desire to keep matters in-house comes to the fore. But more than just wanting to deal with the illegal actions of its servants internally, the legal strategy of *exceptie* and *renvoij* reveals the VOC's attempts to delineate the jurisdiction of the court in Batavia, and seal off the company's legal arena from the courts in the Republic.

During the 1720s the High Court in The Hague deliberated on a case in which the VOC employed the strategy of *exceptie* and *renvoij*. The case before the High Court was between Ida Hochepied, widow of Wouter Valkenier, and the 'Directors of the General East India Company', and revolved around the company's refusal to pay out an enormous inheritance of approximately *f*100,000 claimed by Hochepied.[88] In this case, and in others, the VOC attempted to have legal proceedings and litigants sent to Batavia to be heard in the Council of Justice there, stating of Hochepied's case "that it all belongs to the [administration of] justice in Batavia."[89] The case between Hochepied and the company brought civil matters of credit and debt, criminal charges of illegal private trade, and contested competence and jurisdiction of the High Court into the same frame.

Ida Hochepied was married to Adriaan Verdonk, VOC director in Persia, and after his death, to Wouter Valkenier, Councillor of the Indies.[90] Verdonk and Valkenier were

[88] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *667* (1721), Resoluties, scan 125.

[89] Original: "*dat die alles behoort tot de justitie op Batavia*." NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *665* (1713), Resoluties, scan 137.

[90] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *665* (1713), Resoluties, scan 137. See also https://www.vocsite.nl/geschiedenis/handelsposten/perzie.html (accessed 2017-06-14).

both men of considerable means.[91] According to the case records, Verdonk claimed that Jacob Hoogcamer, Director in Persia from 1698-1701, owed him Rds37828, approximately *f*94,570.[92] After Verdonk's death, Hochepied and the heirs gave power of attorney to N. Castelijn and N. van der Hoff, to claim the sum from Hoogcamer in Asia, presumably Batavia. The parties were engaged in a civil suit over the size of the debt. However, the fiscal there began criminal proceedings against Hoogcamer and van der Hoff, claiming that the contested sum should in fact be confiscated because it was the proceeds of 'forbidden trade', that is illegal private trade. Following the criminal case in 1706, the sum was confiscated and sequestered in the company's treasury in 1709.

In the Republic, Hochepied asked the Gentlemen Seventeen to have the funds remitted to the Amsterdam chamber and distributed in the Republic. Instead, the company directors ordered the Council of the Indies to divide up the money according to the Council of Justice's sentence, without specifying what that entailed. Dissatisfied, Ida Hochepied brought the matter to court in 1710 and received permission from the Court of Holland to sue the VOC in first instance. She concluded that the VOC should be condemned to pay her the sum which had been withheld from her for no reason; rebutting Hochepied's claim, the company said that they did not owe her the money, all they had done was order a sentence passed in Batavia be executed. Based on the company's belief that the matter belonged in the judicature of Batavia, they submitted *exceptie van incompetensie en renvoij* as well as *litispendentie*, that is, they proposed that the court was not competent to adjudicate the case, that it should be sent back to Batavia, all the more because there was an ongoing case there over the same issue. In November 1711 the Court of Holland ruled in favour of the VOC: the exception of incompetence was accepted, and the court concluded that the case – Hochepied's claims – should be heard in Batavia. The High Court revisited the Court of Holland's decision (*reformatie*) and wrote up a resolution for the sentence in 1713. The Resolution summarizes Hochepied's reasoning: her legal action was based in the same location from which the company's instructions emanated. In Hochepied's view, the fact that the company ordered that the sum confiscated be divided up and handed out, which order was given by the Gentlemen Seventeen in the Republic, meant that the matter belonged in the courts in the Republic, which were after all, the only courts where litigation against the Gentlemen Seventeen could be pursued. In 1713, the High Court's commissioners, Simon Admiraal and Reinier Schaep, recommended that the Court of Holland's sentence be overturned and the exception submitted by the VOC rejected, that is, the case would not be sent back to Batavia. However, the matter was not concluded: the case reappears in the High Court records in 1714, and again in 1721.[93] No final judgment was pronounced by the High Court: Reporter Simon Admiraal recommended that the court could not pronounce a definitive sentence, rather the matter had to be shelved until the civil case in Batavia over

[91] According to Gaastra, Wouter Valkenier remitted the princely sum of *f*243,000 to the Netherlands when he departed Batavia in 1699. Gaastra, *Bewind en beleid*, 328 n. 383.
[92] https://www.vocsite.nl/geschiedenis/handelsposten/perzie.html (accessed 2017-06-14).
[93] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *665* (1713), Resoluties, scan 137; inv. nr. *667* (1721), Resoluties, scan 125.

the value of the debt had been determined; otherwise, the court would have to deny Hochepied's claim.[94] There is no further trace of the dispute in the High Court records.

The VOC used the same legal strategy in the high-profile case against former *resident* of Bassoura (Basrah, Iraq) Frans Canter. He was not accused of illegal private trade, but of corruption – theft from the company's treasury, and desertion. In April 1752 the Amsterdam *schout* arrested Canter on the order of the directors of the Amsterdam chamber of the VOC. Over the following years, the dispute played out in the juridical and political institutions of the Republic as the family Canter and the VOC Chamber Amsterdam went head to head. The matter at the centre of the case, as Roelof van Gelder points out, was the competence of the courts in the Republic to adjudicate the case. More specifically, the juridical and political institutions – at city, provincial and supra-provincial levels – grappled with the question of whether an Amsterdam burger could be tried by courts in the Republic for alleged crimes committed in the VOC's jurisdiction, and which of the institutions could decide which court was competent.[95]

The VOC attempted to have Canter extradited to Batavia. The Amsterdam Alderman agreed to the request, but the family contested the decision in the Court of Holland, however, to no avail. The family then appealed to the High Court to have Canter released. Despite dividing the bench, the court pronounced that Canter could not be extradited to Batavia before the High Court had drawn up a definitive sentence. Moreover, the family addressed Anna van Hanover, widow of the deceased stadholder William IV, with the same request that Frans Canter be released. Based on the opinions she solicited from the Court of Holland and the *hoofdofficier* of Amsterdam, she denied the family's request. In December 1752, the High Court pronounced a verdict in the case – in contrast to the court's earlier decision, the court removed the obstacles to extraditing Canter to Batavia. Canter, who was still in custody at this stage, tried to escape but failed. His family continued their attempts to secure his freedom – they sought revision of the High Court's decision – *mandament van revisie* – and it was granted them by the court. The legal minds employed by both sides each produced a printed *Deductie* in which arguments were put forward regarding Canter's status as burger in Amsterdam, or not and how that affected which court was competent to decide the matter of transportation. On 2 October 1753 the bench of the High Court, augmented with judges from the Court of Holland, declared their previous judgment erroneous. The court prohibited the VOC to send Canter to Batavia, and gave the company six weeks to pursue the case before the competent court in the Republic. Neither side was satisfied to leave the dispute at that point – the Canter family tried to have Frans released from custody; the VOC tried to enlist the support of the States General, and, relinquishing their other allegations, tried to have his *f*7000 wage credit confiscated by the Amsterdam court. In January 1754, nearly two years after his arrest, Frans Canter was released on bail.[96] Van Gelder concludes that the VOC was the loser in

[94] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *667* (1721), Resoluties, scan 125.
[95] Gelder, "De kas van de compagnie."
[96] Ibid., 34-42.

the case; the Amsterdam Aldermen were the winners: "[a]gainst the will of the Court of Holland and against the wishes of the VOC they managed to maintain their rights."[97]

A third case in which the VOC employed the same strategy against a company servant serves to reinforce the enduring nature of the pattern. During the late 1770s, the High Court heard an appeal case from the VOC against former undermerchant, secretary of policy and treasurer of Negapatnam (Nagapattinam, Tamil Nadu, India), Johannes Hazelkamp. The dispute between the company and their former employee had its origins in the 1760s, when it came to light that there was a significant shortfall in the company's funds under his control. Criminal proceedings were instituted against Hazelkamp in Negapatnam but he appealed them successfully in Batavia and was reinstated. In 1768 Hazelkamp returned to the Republic where he claimed a sum of money owed him by the VOC, likely wages accruing in the chamber which had employed him. The case between Hazelkamp and the VOC progressed from the Provincial Court to the High Court, which overturned the 1777 sentence and decided that the company's 'exception of incompetence' would in fact be accepted. This sentence was passed in June 1778.[98]

The three cases presented here indicate that the VOC used a legal strategy of *exceptie* and *renvoij* to try to keep legal disputes in-house, that is, to try to bar cases based on issues which had arisen in Asia from entering the legal arena in the Republic. The link to private trade was clear in the first case, between the VOC and Ida Hochepied: criminal proceedings against high-ranking personnel in Asia or their representatives were mentioned in the case in the High Court because of the bearing that such proceedings had on whether or not the Court of Holland or the High Court could adjudicate a related dispute. The cases against Canter and Hazelkamp indicate that matters of jurisdiction and competence of the courts in the Republic continued to be contested in the eighteenth century. The VOC was by no means assured of the High Court's support in these challenges – while the VOC tried to use the High Court to seal off the escape route from Batavia's jurisdiction and thus the company's legal system, the three court cases taken together show that the company's strategy was not entirely successful. Furthermore, the cases highlight the different types of illegality, in illegal private trade and the broader category of what the VOC considered corruption.

Cooperation in illicit Atlantic affairs

In contrast to the VOC's insulated legal system, the WIC's system of courts overseas linked up with the courts in the Republic. As Chapter 1 showed, the States General was the linkage. Thus, it is not surprising that the records of the High Court in The Hague include

[97] Original: "*Tegen de wil van het Hof van Holland en tegen de wensen van de VOC in hebben ze hun rechten weten te handhaven.*" Ibid., 44.

[98] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *958* (1778), Register der dictums... gepronuncieerd, scan 5; inv. nr. *923* (1778), Register der dictums... geresolveerd, scan 77; inv. nr. *680* (1778), Resoluties, scans 96-8. Opstall, M. E., van and R de Vries, "1.10.59 Inventaris van het archief van S.C. Nederburgh [levensjaren 1762-1811], 1606-1809 en van de familie Nederburgh, 1458-1965" (Den Haag, 1987), 85.

court cases which began in the WIC's courts and were delegated to that bench by the States General. One such case originated in the court in Elmina, on the West Coast of Africa. This section focusses specifically on that region, and the illegal private trade conducted there – in enslaved Africans and gold – by non-company men, and company men alike. The Elmina case as well as other cases relating to illegal private trade on the West Coast of Africa will be used to make three points: firstly, regarding the mechanisms of smuggling, the cases highlight the importance of cooperation between individuals of different 'national' empires; secondly, they bring into sharp relief the changing regulations on legality in trade; and finally, they reinforce the point that being guilty of illegal private trade did not preclude the use of the courts.

The infamous *lorrendraaiers*

Studies by Henk den Heijer and Ruud Paesie, among others, have made it clear that the WIC faced competition in trade from illegal voyages to the West Coast of Africa, particularly from Zeeland. The scale of illegal activity is striking: according to Paesie, there were 800 vessels equipped for illegal Atlantic trade in the period 1674-1730, around 80 per cent of which were based in Zeeland ports; during that same time frame the WIC sent out 660 ships, some of which were actually captured smuggling vessels.[99] These private voyages breached the WIC's monopoly as well as those of other empires. Specifically, the terms which the Spanish and the Republic agreed to at the Peace of Munster (1648) outlawed trade between the Republic and Spain's colonies and concomitantly between Spain and the Republic's colonies. However, trade was conducted via Curaçao and after 1670, a direct trade was established with the Spanish colonies, conducted principally from Zeeland.[100] Paesie states:

> As soon as peace was agreed [at Munster, 1648] the same shipowners switched over to illegal trade with the Spanish colonies or they evaded the WIC charter and equipped ships for the illegal goods- and slave trade to West Africa. The original Zeeland position for maintenance of the WIC charter was thereby drastically altered.[101]

For a period, the illegal trade flourished, and during wartime, privateering made many men wealthy. But the WIC took measures against the illegal activity, namely capturing smuggling vessels and confiscating the ships and cargo; and bringing Zeeland smugglers into company employ. In the wake of these successful measures, in 1720 wealthy Zeeland merchants put together plans to rejuvenate trade through cooperation, in the form of a company. They sought approval from the city authorities which was granted them in July

[99] Ruud Paesie, *Geschiedenis van de MCC. Opkomst, bloei en ondergang.* (Zutphen: Walburg Pers, 2014), 22.
[100] Ibid.
[101] Original: "*Zodra de vrede gesloten was schakelden dezelfde reders over op de verboden handel op de Spaanse koloniën of ontdoken zij het octrooi van de WIC en reedden zij schepen uit voor de illegale goederen- en slavenhandel op West-Afrika. Het oorspronkelijke Zeeuwse standpunt tot behoud van het WIC-octrooi was daarmee drastisch gewijzigd*." Ibid., 20.

1720, and thus the *Commercie Compagnie van Middelburg* (MCC) came into being. The directors were Middelburg burgomaster (*burgemeester*) Willem van Citters, merchants Hermanus van der Putte, Pieter de la Rue, Hermanus Christiaensen, Jacobus Sluijters, Casparus Ribaut, Cornelius Speldernieuw, and Joost van Huijen, and former VOC skipper Jan Ackerman.[102] When it was established in 1720, the goods- and slave trade conducted by the MCC was illegal as it breached the monopoly which the WIC still held, albeit tenuously, over trade on the West Coast of Africa and the slave trade. However, that was to change as the WIC's monopolies were finally given up in the 1739 charter renewal.

Pieter de la Rue had a long career as a smuggler before his involvement in establishing the MCC. During the War of Spanish Succession, he was involved in 15 privateering voyages, some of which included smuggling. After the war, his illegal trade continued, while simultaneously he was chairman of the principal investors (*hoofdparticipanten*) of the WIC and was also a director of the Levant Trade. Significantly for his Atlantic trade activities, he was involved in the manufacture of gunpowder, an essential item for trade on the West Coast of Africa.[103] High Court records show that de la Rue was involved in illegal trade even earlier than the War of Spanish Succession: during the 1690s he was a litigant in an insurance dispute which revealed his involvement in breaking the monopoly of the WIC. While the WIC was not a party to the case, the company's monopolies were under discussion amongst the judges. The case between de la Rue and Hendrik Dusseldorp makes clear that illegality did not preclude the use of financial instruments nor contesting their terms in court.

In 1698 or 1699, *De Pieter* set sail from Middelburg to the West Coast of Africa. That the voyage was illegal was clear in the insurance contract drawn up in August 1698: *De Pieter* set out "from Middelburg to the coasts of Africa and America, without permission from the West India Company, to all known and unknown, permitted and unpermitted coasts, there to trade etc and then return to Middelburg."[104] The court records recount that, despite the explicitly illegal nature of the voyage, the participants registered the insurance contract with a notary. The use of public institutions to register illegal trade is not unique to this case: research on the brazilwood trade has shown that participants used notaries to register their illegal trade agreements and contracts.[105] What the case of *De Pieter* adds to this, is the fact that the participants could use the legal system to resolve the commercial conflicts which arose out of their illegal private trade.

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[102] Ibid., 27-28.

[103] Ibid., 22.

[104] Original: "*van Middelburgh op de custen van Africa en America, sonder permissie van Westind[isch]e comp[agni]e op alle bekende en onbekende, gepermitteerde en ongepermitteerde custen, en daer negotieren etc ende dan weder keeren tot Middelburg*." NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *666* (1715), Resoluties, scan 63. It is possible that this is the same ship mentioned in Paesie's database although a number of details do not match up. While the dates are correct, and the skipper's name is most likely correct, Paesie's description notes they stole slaves and goods from the French whereas the High Court records indicate that the ship was taken by the French after the Atlantic crossing and was brought to St. Malo. http://www.paesie.nl/pdf/Overzicht_van_getraceerde_smokkelschepen_met_aanvullingen_nov_2014.pdf (accessed 2016-03-01).

[105] Antunes, Post, and Salvado, "Het omzeilen van monopoliehandel," esp. 31, 34.

According to the court records, *De Pieter* was a slave ship, which had loaded slaves in Bijagos (islands off the coast of Guinea-Bissau) and sailed across to the French colonies 'in America'. This contravened the WIC's monopoly which at this stage still covered the slave trade from the West Coast of Africa. *De Pieter*'s voyage simultaneously contravened French regulations. As Silvia Marzagalli writes, what came to be known as the 'exclusive system', implemented by Colbert in the 1670s, was aimed at excluding foreigners, and in particular the Dutch, from French colonial trade. Under this system, French colonies were supposed to be supplied only by the French but their provisions, including labour, were not sufficient and so an "intensive illegal trade went on with Curaçao and whoever else in the Caribbean who was able to sell slaves to French colonists."[106] The French seized the slave ship *De Pieter* on its return to the Republic and took the vessel to St. Malo, where legal proceedings might have ensued over the legitimacy of the prize. In the Republic, a dispute arose between Pieter de la Rue, who had taken out insurance on *De Pieter* and Hendrik Dusseldorp, the accountant (*boekhouder*) for the expedition, who had been tasked with reclaiming the ship in St. Malo. The case between the two men was first heard by the Commissioners for Insurance (*commissarissen van Assurantie*) in Middelburg, whose verdict was confirmed by the Middelburg Aldermen (*burgemeesters en schepenen*) the following year, 1707. While the other insurers had already made their payments, de la Rue refused to, claiming that *De Pieter* should not have sailed to the French colonies and that in so doing, had increased the risk of the voyage. In the High Court, the judges discussed the terms of the insurance policy, concluding that they were very general, and considered the implications of sailing to the French colonies as opposed to the "coasts of the West India Company like ordinary smugglers."[107] De la Rue may well have taken the implication that he was extraordinary as a compliment.

The WIC was not a party in the dispute but the company's charter was considered by some of the judges. Judge Reinier Schaep noted that there was no greater risk sailing to the French colonies than to other coasts in America seeing as all those places were illegal. Judge Pompejus de Roovere took the matter a step further by considering the implications of the illegality of the voyage for pronouncing a ruling: he raised the issue whether or not the court could rule on the insurance claim seeing as the policy contravened the WIC's charter.[108] In spite of this reservation, in 1715 the High Court upheld the verdict of the two lower courts, declaring de la Rue not aggrieved by the sentences.[109]

This case is a clear example of how illegal activity did not preclude the use of financial instruments and judicial institutions in the Republic. In spite of the illegal nature of the voyage, Pieter de la Rue and Hendrik Dusseldorp drew up an insurance contract for

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[106] Silvia Marzagalli, "The French Atlantic," *Itinerario* 23, no. 2 (1999): 77. Silvia Marzagalli, "The French Atlantic and the Dutch, late seventeenth-late eighteenth century," in *Dutch Atlantic Connections, 1680-1800: Linking empires, bridging borders*, ed. Gert Oostindie and Jessica V. Roitman (Leiden and Boston: Brill, 2014), 103-108.
[107] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *666* (1715), Resoluties, scan 63.
[108] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *666* (1715), Resoluties, scan 63. Original: De Roovere: "*Bedenken te hebben, of wij op sulke policen, strijdende tegen t octroij vande compe, wel regt connen doen*."
[109] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *666* (1715), Resoluties, scan 63.

their voyage. And on the basis of that contract the two men engaged in litigation in Middelburg and on appeal in the High Court. Furthermore, the case highlights the inter-imperial character of illegal slave trade, in this case Dutch illegal trade to the French colonies. This point is picked up in the case of *The Happy Return*, a collaboration between Dutch- and Englishmen in the trade on the West Coast of Africa.

The Happy Return did not live up to its name. The ship sailed from Rotterdam to the West Coast of Africa where it was seized by the Dutch West India Company in 1730.[110] From a Dutch point of view, that year marked many changes on the ground and in the regulations of the trade in West Africa. In March 1730, the Director General of Elmina, Robbert Norré, was succeeded by Jan Pranger.[111] Despite personal involvement in smuggling, Norré had taken a hard line against former WIC employees who became smugglers and reappeared on the coast.[112] 1730 was also the year in which the WIC charter was renewed. From 1674 – when the second WIC was brought to life out of the bankruptcy of the first – the company held monopoly rights over trade on the West Coast of Africa and the slave trade to the Americas. However, after heated debate between Amsterdam and Zeeland, the 1730 charter limited the company's monopoly to a stretch of the Gold Coast and the slave trade to the Guyanas (Suriname, Essequibo and Demerara, and Berbice). Trade on other sections of the West Coast of Africa was opened to private traders against payment of recognition fees to the WIC.[113] It was in this context of the redefinition of legality that *The Happy Return* was seized.

The court records give no indication of what was on board the ship but do identify the freighter and supercargo and thus lay bare the inter-imperial character of smuggling. Isaac Minet, the freighter, was named as one of the litigants in the High Court records.[114] Minet (1660?- 1745) was from a family of French Huguenots who had left Calais in the 1680s and settled in Dover, England. There the family established a successful shipping firm. They profited from the Letters of Marque which became available when England joined the War of Austrian Succession (in 1744) and at about the same time they expanded their business to banking services. Isaac Minet was joined in the business by one of his sons, William (?-1767), as well as by his nephew Peter Fector (1723-1814) who was from Rotterdam.[115] Fector was not the only Rotterdam connection: Jacob de Vries,

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[110] Paesie, "Lorrendrayen op Afrika," 286. See also Paesie, 'Overzicht van getraceerde lorrendraaiers.'

[111] *Naamboekje van de wel ed. heeren der Hoge Indiasche Regeringe gequalificeerde persoonen, enz. op Batavia; mitsgaders respective gouverneurs, directeurs, commandeurs en opperhoofden op de buiten comptoiren van Nederl. India, zoo als dezelve ultimo April 1762. in wezen zyn bevonden. Als mede alle gouverneurs generaal zedert het jaar 1610. Nevens de hooge en mindere collegien en bedienden op de buyten comptoiren van Nederlands India*, (Amsterdam: Cornelis Wilt, 1763), 104.

[112] Paesie, "Lorrendrayen op Afrika," 286.

[113] Antunes, Post, and Salvado, "Het omzeilen van monopoliehandel," 44 (Table 43); Heijer, *Goud, ivoor en slaven*, Ch 9.

[114] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *968*, Sententiën of dictums in gedelegeerde zaken en revisiën, unpaginated.

[115] http://doverhistorian.com/2013/12/24/dynasty-of-dover-part-iv-minet-fector/; http://heritagearchives.rbs.com/companies/list/fector-and-co.html; http://archives.ucl.ac.uk/DServe/dserve.exe?dsqIni=Dserve.ini&dsqApp=Archive&dsqDb=Catalog&dsqCmd=show.tcl&dsqSearch=(RefNo==%22HUGUENOT%20LIBRARY/F/MT%22) (accessed 2016-02-05).

the supercargo on board, originated from Rotterdam. He was also a former WIC employee. During the 1720s he had been employed by the company as a skipper (*schipper*) in which capacity he had made a number of voyages. Then he became a smuggler.[116]

It is likely that despite its English flag, *The Happy Return* was considered a *lorrendraaier* by the WIC because for all intents and purposes it appeared to be Dutch: the voyage started in Rotterdam, and the supercargo originated from the same place, and was himself a former WIC servant. It is possible that the majority of the crew was also Dutch, seeing as the ship was probably equipped in Rotterdam too. From the High Court records it is clear that after the ship was seized it was taken to Elmina where the Director General, Jan Pranger, and his council passed a sentence on 24 July 1730.[117] While the High Court records do not state what the sentence was, or who the party was, it was surely a condemnation of the ship and cargo, declaring it to be good prize. According to WIC appraisal lists (*taxatielijsten*), *The Happy Return* was carrying textiles, firearms and gunpowder, iron, alcohol, beads and cowries valued at *f*10.918.[118]

From the point of view of the English, however, *The Happy Return* and Minet's involvement in trade on the West Coast of Africa was perfectly permissible – since the Royal African Company had officially lost its monopoly in 1698, the trade was open to private traders, against payment of a levy.[119] Isaac Minet, the freighter, felt aggrieved by the sentence passed by Pranger and Council and must have petitioned the States General with his grievances.[120] The States General delegated the writing of a sentence to the High Court in 1732. On 28 September 1734 the High Court sent the States General an interim decision (*interlocutoire sententie*) which was passed by resolution in the States General's meeting the following day. It required more proof from Minet which he provided in 1736. The High Court then moved to drawing up the final verdict: the 1730 sentence which was under revision was judged to be fair towards Minet and he was therefore required to pay the cost of the revision. This sentence was not passed by the High Court but sent back to the States General in fulfilment of their request.[121] The case thus reveals how, in the writing and sending of letters between the two institutions, the States General used the

[116] Paesie, "Lorrendrayen op Afrika," 286. And Paesie, 'Overzicht van getraceerde lorrendraaiers.' Paesie gives a number of examples of men who had served the WIC and then left company employ to make a profit in privateering expeditions, including Arie van der Parre who was a WIC skipper turned smuggler and was supercargo aboard a ship that was off the coast of West Africa at the same time as *The Happy Return.*

[117] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *968*, Sententiën, unpaginated. *Naamboekje*, 104. According to den Heijer, the Director General and councillors did not necessarily have any legal training, but did have access to some legal texts on the coast. He states that "[i]f the legal sources available were inconclusive, decisions were made based on experience" which was usually sufficient in minor cases. But den Heijer implies that they could be out of their depth in more complex cases. In such circumstances, "defendants had the right to submit their case to the directors *in patria*, especially when they had a higher rank." Heijer, "Institutional interaction on the Gold Coast," 214.

[118] Paesie, "Lorrendrayen op Afrika," 391.

[119] Kenneth Gordon Davies, *The Royal African Company* (London: Longmans, Green and Co, 1957), esp. 122-135.

[120] There is no record of Minet's case in the Court of Appeals archive. In fact, none of the cases in that archive originated from the court in Elmina. This may be an indication of the court's limited jurisdiction, or the result of what has been preserved and lost.

[121] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *968*, Sententiën, unpaginated.

mechanism of delegation to connect WIC Atlantic jurisdictions with the High Court in The Hague. Even though no mention was made of the Court of Appeal, the Minet revision case follows the pattern set out in Figure 2 (Chapter 2).

Both cases of smuggling on the West Coast of Africa bring to the fore the kind of opposition that the Dutch West India Company faced. Equipping voyages for private trade from the Republic contravened the WIC monopoly, which was also under threat from the Zeeland Chamber which advocated doing away with the monopoly and instead allowing private trade against payment of recognition fees. The VOC did not face an equivalent type of opposition – ships were not equipped in the Republic for trade voyages in contravention of the VOC monopoly, other than in the early years of the seventeenth century, addressed in Chapter 2.

The voyage of *De Pieter* contravened the WIC's monopoly and flouted French regulations regarding delivery of slaves to its colonies in the Americas. The illegality of the voyage did not prevent the men involved from insuring the voyage but more than that, it did not preclude contesting the terms of the policy in the High Court. However, Judge de Roovere in particular revealed his concern over whether or not the court could adjudicate the case seeing as the voyage contravened the WIC charter. Similarly, *The Happy Return* was considered to be a monopoly breaker by the WIC and was seized off the West Coast of Africa, and sentenced in Elmina. But the English freighter, Isaac Minet, contested the decision, most likely by addressing his protest to the States General. The States General then delegated the case to the High Court and passed the High Court's sentence in its own meeting. Despite the English freighter, and sailing under an English flag, *The Happy Return* began its voyage in Rotterdam, and likely had numerous Dutchmen amongst the crew. The supercargo himself not only originated from Rotterdam but also was a former WIC skipper. Looking at this case from the point of view of mechanisms of smuggling, we cannot avoid the collaborative character of the voyage. It was neither English, nor Dutch, but inter-imperial in nature.

Smuggling gold

In the same year that Minet's *Happy Return* was taken, Robbert Norré vacated the position of Director General on the coast. He had taken up the post on 11 March 1727 as successor to Pieter Valkenier under whose directorship he served as principal factor (*oppercomies*), and held the post until 5 March 1730. In February of that year, with concerns over his health, Norré had requested that he be relieved of his position, which he received, and Jan Pranger then replaced him.[122] Norré began his journey back to the Republic in 1730 on board the ship *Delft*. Having survived the conditions on the coast for at least two years – conditions which brought premature death for thousands of Europeans – Norré

[122] Incidentally, his predecessor, Valkenier, had also claimed to have concerns about his health in his request to be repatriated. This was perhaps a good argument to make, the coast being infamous for its high mortality but we can suspect that these men, having enriched themselves on the coast, were ready to return to the Republic to enjoy the proceeds of their trade. Henk den Heijer, ed. *Naar de koning van Dahomey. Het journaal van de gezantschapsreis van Jacobus Elet naar het West-Afrikaanse koninkrijk Dahomey in 1733* (Zutphen: Walburg Pers, 2000), 29-30. See also *Naamboekje*, 104.

succumbed on his way to the Republic. What was discovered at his death – that he had sent and was himself carrying gold back to the Republic – became part of a legal battle between his heirs and the Dutch West India Company which was only brought to a close in 1751.[123] The case reveals mechanisms of the illegal gold trade, and in particular identifies the men involved and their roles in the illicit activity.

Robbert Norré's heirs in the Republic disputed his estate. This brought them into conflict with the WIC which unfolded in the years immediately following Norré's death. The heirs appeared before commissioners of the company, asking for the Gentlemen Ten's grace, and that the company would hand over all the goods that had belonged to Norré. Having considered the family's need, the company handed over various goods of some value, including a chest of Norré's papers. Inside the chest the family found the agreement which had been made between a WIC skipper named Hoogdorp and the deceased Norré regarding 16 mark gold dust which he, Hoogdorp, would transport to the Republic. As a result of this find, and not having received the gold from Hoogdorp themselves, the family began legal proceedings against him. The WIC intervened on behalf of Hoogdorp, their employee, and took over the case for him. Thus, the heirs were the claimants, Hoogdorp the original defendant and the WIC the intervenors in the case over the disputed estate.

The case between the heirs and Hoogdorp was sentenced in the Provincial Court on 10 July 1750, a full two decades after Norré's death. The court's verdict favoured the heirs: Hoogdorp and the WIC had to pay the heirs the proceeds from the sale of the gold or what was purchased or invested with the proceeds as well as interest of 4 per cent per annum.[124] This verdict was reached by the Gentlemen Johan de Mauregnault, president; Adriaan van der Mieden; Carel Vitriarius; Johan Diederik van Slingeland; Wigbold Slicher; Jacob Arent van Wassenaar, Heere van Haseswoude; and Samuel Gilles all of whom were councillors in the Court of Holland (Provincial Court).

The WIC felt itself greatly aggrieved by the sentence and so proceeded to the next instance, requesting and receiving leave to appeal the verdict of the Court of Holland in the High Court. Their claim was to overturn or correct the sentence passed by the Court of Holland, which the High Court did by a sentence dated 3 April 1751. The High Court judges who were involved in pronouncing the final verdict were the Gentlemen Ruster, Mollerus, Pauw, van Nispen, van Santheuvel, Dierkens, Alewijn, Mauregnault, and the president at the time, Hendrik van Hees.[125]

The decision taken by the court was by no means simple, and neither were the judges in full agreement on the reasoning behind the verdict. The technical point of intervention – replacing a litigant as opposed to joining one party and becoming a co-litigant – was discussed at length. The doctrine of *Ex turpi causa non oritur actio* was also

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[123] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *843* (1751), Geextendeerde Sententie, scans 33-39.

[124] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *843* (1751), Geextendeerde Sententie, scan 38.

[125] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02 inv. nr. *676* (1751), Resolutie, scans 22-24; inv. nr. *843,* Geextendeerde Sententie, scan 39.
http://resources.huygens.knaw.nl/repertoriumambtsdragersambtenaren1428-1861/app/personen/4836 (accessed 2016-01-28).

discussed. According to this legal principle, a litigant cannot pursue a legal remedy to a situation which has its origin in his own illegal act.[126] These legal conundrums arose out of the actions undertaken by Norré and his fellow smugglers at Elmina which were in flagrant disregard of the company's regulations and constituted a breach of its monopoly on the gold trade.

Dutch involvement in gold trade on the West Coast of Africa predated the creation of the WIC. After that company was established, gold was the main reason for the company to be active on the coast.[127] Between 1623-36 the company exported 40.500 Mark of gold (9.185,4kg) valued at *f*12 million while during the following four decades, the total export reached 57.532 Mark (13.048,26 kg).[128] As the seventeenth century progressed, and the Ashanti empire expanded, gold trade declined and there was a shift away from gold towards trade in enslaved people. Around 1700, the declining gold export from the coast stabilised at a lower level than in the early years of the company's trade.[129] When the WIC charter was renewed in 1730, a sixty mile zone on the coast at Elmina remained under company monopoly, but the rest of the coast was open to private traders. Within the exclusive zone, trade in goods and enslaved people could only be conducted in the name of the WIC. When the charter was amended in 1734, even that exclusive zone was given up.[130] Thus, during Norré's tenure, the gold trade was one branch of trade over which the WIC still held a monopoly.

The company on the coast was beset with problems, not least the corruption of its servants operating there. Of course, company employees going to the West Coast of Africa had to swear loyalty to the company, promising to follow the company's regulations, which included provisions against illegal private trade.[131] Regarding gold specifically, the directors of the WIC required that all gold sent back to the Republic from the coast should be addressed to them. The resolutions and orders which were sent to the coast expressly forbid anyone from sending gold to the Republic which was not addressed to the company on pain of confiscation of the gold in addition to forfeiture of wages and emoluments still owing to the employee according to the company's books. The intimation was that none of the company employees could possibly pretend ignorance of these regulations seeing as they were sent to the coast from time to time and were put up there in public.[132] Promised loyalty was no guarantee of obedience. Henk den Heijer claims that the corruption of officials on the coast contributed to the "disappointing" and "lacklustre" results of the company's trade there. He states that "[t]hroughout the area governed by the WIC, including the Gold Coast, staff members attempted to enrich themselves by

[126] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *676* (1751), Resolutie, scan 23.
[127] Heijer, *Goud, ivoor en slaven*, 128.
[128] Heijer, "The Dutch West India Company," 90.
[129] Heijer, *De geschiedenis van de WIC*, 134-135.
[130] Heijer, *Goud, ivoor en slaven*, 312; Antunes, Post, and Salvado, "Het omzeilen van monopoliehandel," 44 (Table 43).
[131] Heijer, "Institutional interaction on the Gold Coast," 207.
[132] Original: "*verbiedende eenig goud buiten addres aan de compe. meede te geeven, op poene van confiscatie van t selve en van alle te goed sijnde gage en emolumenten*." NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *676,*Resolutie, scan 22.

stealing company goods and organizing private trading."[133] Director General Robbert Norré's dealings on the coast underline this conclusion and shed light on the form that private trading could take.

The mechanisms of illegal private trade in gold which are revealed in the case point to the importance of cooperation between individuals who operated within different imperial legal frameworks but whose trade networks intersected. According to the company,

> notwithstanding the aforementioned precise, emphatic and serious resolutions and orders, the mentioned Norré dared to contravene them [by] directly engaging with various private English ships, to remit hundreds of ounces of gold from time to time not addressed to the intervenors [that is the company].[134]

The company believed that Norré cooperated with English private traders to smuggle gold on board English vessels. How frequently he made use of this smuggling route and when it was first operational is impossible to discern from the court records but clearly the company believed that it happened a number of times. It is highly likely that it was during his time as principal factor on the coast that Norré built up his connections and started to exploit the opportunities for personal enrichment. We cannot be sure of this but taking into account the fact that Norré was director for only three years, and the assertion by the company that it happened "from time to time" (as problematic as that assertion is knowing they were trying to build their case), and that three separate episodes of illegal transport of gold come to light in the case, it is plausible, if not highly likely that Norré had been involved in illegal private trade for some time.[135]

The company's evidence of English-Dutch cooperation in circumventing the WIC monopoly on gold was bills of lading (*cognoscementen*) of 162 Mark of gold (1296 ounces; 36,74kg) which Norré had addressed to a man named Humphry Morice.[136] It is quite possible that this is the same Humphry Morice who was Governor of the Bank of England from 1727, a Minister of Parliament and merchant. In the 1720s Morice was known as one of the experts on trade on the West Coast of Africa, along with his friend and business associate Richard Harris. Morice and Harris equipped ships together which plied the West Coast of Africa, the trade at that point being open to private traders from the point of view

[133] Heijer, "Institutional interaction on the Gold Coast," 207.

[134] Original: "*dat niet teegenstaande voors: precise nadrukkelijke en ernstige resolutien en ordres gemelte Norre zig hadde verstout daar teegen directelyk aan te gaan en buijten adres aan de intervenienten met verscheijde particuliere engelsche scheepen van tijd tot tijd honderde oncen goud te remitteeren."* NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *843,* Geextendeerde Sententie, scan 35.

[135] Norré was principal factor during the Directorship of Valkenier. Heijer, *Naar de koning van Dahomey*, 30. His career before that is unknown.

[136] 1296 ounces of gold dust = 162 mark ≈ 40kg in troys weight. No estimate of the value was given in the legal records. NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *843,* Geextendeerde sententie, scan 35.

of English legal pronouncements.[137] It is possible that Norré sent gold to Morice on board the ships which Morice and Harris sent to the coast.

In addition to the English connection, Norré used WIC connections to send gold to the Republic. He cooperated with fellow WIC servants who carried gold to the Republic on company ships. Amongst Norré's papers, evidence was found that he had made an agreement with the skipper Jan Lambregstsen Hoogdorp of the ship *Steenhuijsen* that the skipper would carry 16 Mark (3.63kg) of Portuguese gold dust from the West Coast of Africa back to the Republic where he would then sell it for the highest profit and buy 'Hollandsche Obligatien' to that value. As per the agreement, when Norré reached the Republic he would then claim the value of the gold and the interest earned on it from Hoogdorp.[138] It is this specific purse of gold and the value of it once sold that was under discussion in the case between Norré's heirs and the skipper Hoogdorp and the WIC in Hoogdorp's place.

The court records indicate that Norré made use of a third means of carrying gold to the Republic, which was to do it himself when he repatriated. The court documents state that when Norré set sail for the Republic on the *Delft*, he was carrying gold with him, which was discovered after his death. No indication of the amount or value was noted.[139]

From the court records then three different means of illegally sending gold from the West Coast of Africa come to the fore, all utilised by one man during his time in company employ on the coast. English connections played a very important role for Norré in the means of smuggling gold from the coast and England was an important destination. Norré attempted to smuggle gold to the Republic via the employees and ships of the West India Company too. It is likely that these three separate instances of illegal private trade in gold which come to the fore in this one case are the proverbial tip of the iceberg. Norré was not the only director to enrich himself in these ways during the period in which the WIC monopolised trade on the West Coast of Africa. Others include Willem de la Palma who had amassed a fortune of *f*75.000 after being Director General for three and a half years, and Norré's successor Jan Pranger returned to Amsterdam in 1736 as a very wealthy man; neither got his money through the *f*300 salary and emoluments of their position alone. Corruption among company men of middle and senior rank on the coast was, according to den Heijer, a damaging and enduring problem.[140] Like many who preceded him, as well as those who came after, Robbert Norré entertained hopes of personal wealth at the company's expense. As the WIC claimed, Norré's dealings with the English, with Hoogdorp and the gold he carried himself "made clear that the

[137] William A. Pettigrew, "Free to Enslave: Politics and the Escalation of Britain's Transatlantic Slave Trade, 1688-1714," *The William and Mary Quarterly* 64, no. 1 (2007): 18-19.
[138] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *843,* Geextendeerde Sententie, scan 34. 16 mark gold is approximately 4 kgs. Hoogdorp was involved in the slave trade as captain of the *Steenhuijsen* between 1726 and 1731, comprising three voyages. http://www.slavevoyages.org/voyages/ViuLF6j5 (accessed 2017-11-18).
[139] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *843,* Geextendeerde Sententie, scan 35.
[140] Heijer, "Institutional interaction on the Gold Coast," 208-209.

aforementioned Robbert Norré had no other intention than to defraud the company and to hide everything from it."[141]

Conclusion

Cases related to private trade arose in the High Court of Holland, Zeeland and West-Friesland. The first of the three contributions that this chapter makes, is to provide part of the answer to the main research question of this thesis, namely, what types of disputes involving the VOC and the WIC arose in the High Court in The Hague? Both the VOC and the WIC were party to litigation in that court which related to the private trade conducted by its servants, such as Toledo and Jan Schull, or by private merchants, such as the Englishman Isaac Minet.

Considering that each company had created a legal system in its own charter area that could deal with private trade court cases, why were there cases related to this issue in the High Court in The Hague? In order to answer this question, we have to go back to the relationship between the courts overseas and the courts in the Republic, set out in Chapter 1, and depicted in Figure 2. The VOC's highest court, the Council of Justice in Batavia, ruled in final instance in the company's legal system. Company servants who deserted and escaped the jurisdiction of Batavia caused the leakage of disputes into the legal system in Holland. When these men arrived in the Republic, and were arrested there, disputes arose over whether or not they should be extradited to Batavia, and over which court in Holland was in fact competent to rule on extradition. The VOC pursued the strategy of *exceptie* and *renvoij* in order to try to keep disputes in-house, and in so doing the company tried to reinforce the jurisdiction of the Batavia court. The extradition cases involving Toledo, Middag and Canter, were not about corruption including private trade per se, but were disputes over jurisdiction which were sparked by company employees' misdeeds.

The case between the VOC and Jan Schull was also an offshoot of an illegal private trade case. This case is quite different in that Jan Schull sued the company for payment of his wages and return of the permitted chests which he brought back to the Republic. The High Court records of his suit against the VOC make no mention of the company trying to have him extradited to Batavia; he was found guilty of illegal private trade by the court in Amsterdam, it seems. His case against the company made its way through the courts according to the progression from city, to provincial court and then to the High Court, as depicted in Figure 1 (Introduction).

In contrast to the VOC extradition cases, private trade in the WIC charter area did not spark disputes in the Republic over jurisdiction. This can be explained by the fact that the WIC legal system was not set up as being insulated from the courts in the Republic – the States General's Court of Appeal was the link between the company courts and the

[141] Original: "d*ewelke in alle zijne omstandigheeen klaar hadden doen zien dat de voors: Robbert Norre niet anders daar mede voor hadde gehad als de compagnie daar in te frauderen en voor deselve alles te verduyste."* NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *843* scan 35.

High Court. The way in which delegation worked was clear in the Isaac Minet case which the States General delegated to the High Court for revision in the 1730s.

Taken together, these private trade related cases bring to the fore important elements of illegality in the Indian and Atlantic Oceans. The second contribution that this chapter makes then, is to bring to the fore mechanisms of illegal private trade. The VOC cases highlighted the way in which transhipping was used to evade the watchful eye of inspectors. Toledo had goods loaded onto the VOC ship on the outward voyage, meeting English ships in the Channel, while Jan Schull had goods from Asia transhipped into lighters before the vessel was inspected on its return to the Republic. The WIC cases reinforce the role of the English, showing that illegality on the West Coast of Africa involved cooperation between rival empires. The inheritance dispute which arose in the courts in the Republic between deceased Governor Robbert Norré's family and the WIC skipper with whom he conducted illegal trade, brought to light that he had in fact been conducting illegal trade in three different ways – carrying gold to the Republic himself, sending it with WIC skippers, and collaborating with English private traders to send gold to a contact in England.

Finally, the cases show that illegal activity did not preclude the use of financial and legal institutions in the management of conflicts which arose from the illegal activities. This was evident in the notarised insurance contract for illegal Atlantic trade which Pieter de la Rue and Hendrik Dusseldorp disputed in the High Court. The inheritance dispute in which the WIC intervened was also a matter which arose out of illegality, as the judges noted in the case. But that did not stop Norré's family from suing the captain for the gold, or its value, which he transported. Furthermore, that Jan Schull sued the VOC to claim his wages and chests even after he had been found guilty of illegal private trade and banished, while audacious, further reinforces that illegality did not preclude the use of the Republic's institutions. Indeed, Jan Schull was one of many litigants who claimed wages from the companies. These cases are the focus of the following chapter.

4. Salaries and secondary markets

Conflicts over payment of employees' wages

As the previous chapter already indicated, wage disputes were another category of conflict that the Dutch East India Company faced in the High Court. In fact, the court records show, the Dutch West India Company also faced wage litigation in the same court. Not surprisingly, the cases involved company employees as the litigants. The VOC and WIC employed hundreds of thousands of men from the Republic and neighbouring regions during the Early Modern period. More than a million men boarded VOC ships and sailed to Asia on company vessels between 1602 and 1795.[1] Thousands more undertook trans-Atlantic voyages in the service of the WIC, which operated between 1621 and the end of the eighteenth century. There were others involved as litigants in wage disputes too. As a consequence of the transferability of wages, the pool of litigants involved in making wage claims was not limited to the wage earners themselves. Salaried employ in the VOC and the WIC opened a range of opportunities to men, which extended across the regions in which they worked.

Wage claims made against the companies, by employees and non-employees alike, were pursued in the courts in the Republic, following the progression from city to provincial court, and finally to the High Court. That the claims entered the legal arena already indicates that the companies did not manage to resolve employer-employee disputes in-house. While some wage claims were surely resolved within company structures, the court records attest that some spilled out into the legal arena in the Republic where they were pursued to the High Court in The Hague. The reason that wage disputes against the companies were heard in the Republic, rather than in the companies' own courts in their charter areas, stems from the payment procedures of both companies. The majority of a company servant's wages accrued to him in the Republic, where the credit was paid out on his return. More specifically, each chamber was responsible for employment and wage payment of its men; wage payment was not centralised. The federalised structure of the companies explains why the directors of specific chambers were named as litigants in the court cases, rather than the Gentlemen Seventeen or Nineteen/Ten.

In addition to bringing to light the range of opportunities that salaried employ brought with it, and the concomitant wide pool of litigants, the cases examined later in this chapter reveal the working of secondary markets for company servants' wage credit.[2] That a secondary market existed in the Republic has already been established in the literature; what the cases to follow reveal is that secondary markets existed in the

[1] Jaap R. Bruijn, Femme S. Gaastra, and Ivo Schöffer, eds., *Dutch-Asiatic Shipping in the 17th and 18th centuries*, vol. 1 (The Hague: Martinus Nijhoff, 1987), 143. Cf F. S. Gaastra, "De VOC als werkgever," in *Uitgevaren foor de Kamer Zeeland*, ed. J. Parmentier (Zutphen: Walburg Pers, 2006), 31-32.

[2] Lodewijk Petram defines a secondary market as "a market where traders buy assets from other traders, as opposed to buying assets from an original issuer." Petram, "The world's first stock exchange," 208.

colonies too. That is, men overseas transferred their wages to others in order to turn credit in the Republic into cash in the colonies. In at least one case, this behaviour went hand in glove with illegal private trade.

This chapter comprises four sections. The first section provides the background of company employment – how wages were paid out and when. This is followed in section two by an analysis of notarial deeds which shows that company wage accounts were transferable. Transferability of wage accounts, that is credit, meant that company servants could put their future earnings to various present uses. The result of transferability was to widen the pool of claimants against the companies – workers' families, heirs, and creditors claimed wages from the companies' chambers.

Sections three and four deal with the wage claims themselves. The third section outlines the ways in which wages were claimed by the diverse litigants before disputes escalated to the level of law suits. Managing conflicts over wages in-house did not always succeed. Section four comprises an analysis of a number of lawsuits in which the chambers appeared in court over non-payment of wages. The chambers of both companies were involved in litigation regarding wage claims which arose out of numerous and varied circumstances, namely, inheritance claims, the liability of crews and skipper when vessels were lost, and secondary markets for wage accounts both in the Republic and in the colonies.

The federalised structure of each company shaped the pattern of conflict management. Because chambers were the direct employers rather than the companies as entities – there was no central recruitment and payment of employees – it was the chamber directors who were petitioned for payment and when these requests were denied, it was the chamber directors who were sued. Wage litigation rarely involved the company directors, the Gentlemen Seventeen and the Gentlemen Nineteen/Ten. The location of wage litigation was also partially determined by the way the companies paid their workers. Payment took place at the end of contracts, when employees returned to the Republic, meaning that wages could only be claimed in the Republic.

While it is sailors' and soldiers' wages that are the focus of this chapter, I have chosen to include a somewhat different but related case. During the 1740s, the Amsterdam Chamber of the VOC faced a lawsuit from the city auctioneers who claimed higher wages from the chamber in light of the increase in goods they were selling at the chamber's auction, in particular porcelain which the company shipped to the Republic. This case serves as a reminder that wage disputes were not only an 'underclass' conflict involving sailors and soldiers; city officials also disputed their wages and used the court as a location in which to negotiate their remuneration in the context of changing patterns of company trade.

In company employ

In the Dutch Republic, "[s]ailors were by far the largest group of wage labourers" and the East and West India Companies the largest employers of these workers.[3] It has been calculated that in the period 1630-40 the VOC employed nine per cent of all available seamen in the harbours of the Dutch Republic. By the end of the eighteenth century that had risen to twenty-five per cent.[4] The maritime labour market out of which VOC and WIC employees were recruited, it has been argued, was international.[5] In particular, research has revealed the preponderance of foreigners in VOC employ. Sailors from the German states, the Baltic region and Scandinavia found employment with the company.[6] Over the whole company period, an average of forty per cent of mariners came from outside the Republic. An even higher percentage of company soldiers were foreign.[7] Comparatively little research has been conducted on the composition of the WIC's workforce, however, there are indications that the company employed numerous foreigners, particularly Germans, and that some of these foreigners took up high-ranking positions.[8]

Of the maritime employers – besides the companies, there were the navy, fishing and whaling fleets, and merchant marine – the VOC and WIC did not have great reputations as employers. Rudolf Dekker notes that the VOC and WIC as well as the navy were "notorious" for dragging their heels when it came to sailors' pay.[9] Furthermore, wage levels in the VOC and the navy were known to be lower than in commercial shipping, whaling and privateering.[10] According to Femme Gaastra, VOC sailors' wages were set at *f*9-11 per month; junior officers on board received *f*18-24; the mate up to *f*50; and the captain *f*60-80.[11] Wim Klooster notes that WIC sailors were attracted by the remuneration package which included board and lodging over and above a wage, although he does note that wages were "modest".[12] In perpetual financial crisis, it is quite likely that the company struggled to pay its employees. There are numerous indications of this. Firstly, Klooster

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[3] Rudolf Dekker, "Labour Conflicts and Working-Class Culture in Early Modern Holland," *International Review of Social History* 35 (1990): 385, 405.
[4] Gaastra, *The Dutch East India Company*, 81.
[5] Lucassen, "A Multinational," 33.
[6] Jaap R. Bruijn, "De personeelsbehoefte van de VOC overzee en aan boord, bezien in Aziatisch en Nederlands perspectief," *BMGN* 91, no. 2 (1976): 234.
[7] Gaastra, *The Dutch East India Company*, 81-82.
[8] Klooster, *The Dutch Moment*, 121.
[9] Dekker, "Labour Conflicts," 385, 406.
[10] Jaap R. Bruijn, *The Dutch Navy of the Seventeenth and Eighteenth Centuries* (Columbia: University of South Carolina Press, 1990), 57. Lucassen draws a similar contrast between the mariners employed by the VOC and the navy on the one hand and the whalers and merchant marine on the other. Lucassen, "Zeevarenden," 158.
[11] Gaastra, *The Dutch East India Company*, 92. For a detailed list of the salaries earned by VOC mariners of all ranks and the corresponding wages paid to navy seamen in the seventeenth century, see Lucassen, "Zeevarenden," 141. Unsurprisingly there was a huge discrepancy in wages between the lowly sailors and the high officials of the company in the Republic. For the remuneration received by directors in the seventeenth and eighteenth centuries see Gelder and Wagenaar, *Sporen van de Compagnie*, 19-20. According to van Rossum, remuneration received by Asian sailors did not differ much in terms of value from their European counterparts. M. van Rossum, *Werkers van de wereld: Globalisering, arbeid en interculturele ontmoetingen tussen Aziatische en Europese zeelieden in dienst van de VOC, 1600-1800* (Hilversum: Verloren, 2014), 220-221, 223.
[12] Original: "*bescheiden".* Klooster, "De bootsgezellen van Brazilië," 41.

notes that wives frequently made claims on unpaid wages and "[w]idows claiming wages on the doorstep of the States General became a familiar sight in the late 1640s."[13] In addition Erik Odegard explains that when the first West India Company went bankrupt, some of those who held bonds were in fact employees whose wages had not been paid. Wage arrears, like company debt, was reissued at a discount as stock in the second West India Company established in 1674.[14]

Employees of both companies worked under contracts and received monthly salaries. This *maandgeld* or *gagie* as it was known, was one element of their remuneration which also consisted of loot (*buitgeld*) from privateering and payments from insurance, subsidies and rewards.[15] VOC employees were rewarded for particularly quick journeys to and from Asia and extra wages were paid to those who avoided the Channel on the return, sailing above Scotland to the Republic. Less frequently, skippers and officers were rewarded for particular actions – against privateers or enemy ships – and widows received sums in recognition of their husbands' heroics. But Bruijn points out that by far the most important of the earnings on the side came from the opportunities for private trade.[16] Known as *voering*, it was customary on various routes for mariners to take goods or cash with them to conduct trade for their own accounts.[17] As discussed in Chapter 3, VOC employees were allowed to profit from limited private trade but many exceeded the allowances, venturing into the world of illegality. As mentioned in that chapter, it is likely that WIC sailors were granted similar private trade privileges in line with the custom of *voering*.

While VOC employees earned a monthly salary, it was not paid out monthly. Wages accrued as credit in the Republic, with the opportunity to draw limited sums both in the Republic and overseas. The chambers paid their employees two months' wages upfront, known as *handgeld,* as did the WIC.[18] The VOC noted the payment as a debit in the worker's account along with other deductions such as the ship's chest he received, fines incurred, and medical costs. Three other deductions could be made on his wage. Money letters (*maandbrieven*) and debt repayment (IOUs, *schuldbrieven*) drawn up in the company's salary office gave workers a way to provide for their families while they were

[13] Klooster, *The Dutch Moment*, 120.
[14] Erik Odegard, "Recapitalization of reform? The bankruptcy of the first Dutch West India Company and the formation of the second West India Company, 1674," *Itinerario* (under peer review).
[15] On VOC remuneration see Lucassen, "Zeevarenden," 140-144. Lucassen also notes that some of the petty officers, such as the accountant-scribe and the surgeon, could perform writing and medical services for individuals and so supplement their wages. Ketting makes the same remark. Ketting, *Leven, werk en rebellie*, 55-56. Blakemore states that the fact that English sailors also received remuneration from various sources, including small-scale trade, complicates the general narrative of transformation from 'collaborative adventurers' to 'the first international wage-earning proletariat'. He states that seafarers "were not simply wage-workers, but also independent participants in a venture economy." Richard J. Blakemore, "Pieces of eight, pieces of eight: Seamen's earnings and the venture economy of early modern seafaring," *Economic History Review* (2017): 1.
[16] Jaap R. Bruijn, *Schippers van de VOC in de achttiende eeuw aan de wal en op zee* (Amsterdam: De Bataafsche Leeuw, 2008), 147-150.
[17] Lucassen, "Zeevarenden," 142. Ketting, *Leven, werk en rebellie*, 55. Lucassen and Rossum, "Smokkelloon en zilverstromen," 127-128. Vanneste, "Sailing through the Strait," 135-136.
[18] Klooster, *The Dutch Moment*, 119.

abroad as well as pay off their debts.[19] These means of transferring wages and their implications for litigation are discussed at greater length later in this chapter. The third deduction was the salary that a company employee could draw in Asia. According to Christiaan van Bochove and Ton van Velzen, employees could draw between three and six months' wages in Asia, which debit was then communicated to the relevant chamber in a salary update. What credit remained after these various deductions was paid to the VOC servant when he returned to the Republic at the conclusion of his contract.[20] Because of this payment scheme, punitive confiscation of wages was a simple way for the company to (attempt to) discipline its servants. Moreover, the company did not need the liquidity in Asia to pay salaries every month.

Some WIC employees were also paid out part of their salaries overseas. Wim Klooster indicates that soldiers in service of the WIC in Brazil received part of their salary there. However, the men were dissatisfied with the payment because it either took the form of 'light money' which was worth twenty-five per cent less than 'Holland money' in the Republic, or they received payment in kind, namely rotten tobacco and sour beer and wine.[21]

Wage conflicts that took the form of collective protest in the streets were not uncommon in early modern Holland and this included action undertaken by VOC sailors.[22] But as this chapter will address, litigation was a viable option for claiming wages, collectively and individually. While there is a general dearth of scholarship on maritime wage litigation in the Low Countries, two scholars have brought the issue to light from the records of the High Court of Admiralty in England. There, as George Steckley shows, sailors pursued collective action which meant that the financial burden of legal fees could be shared between them, reducing the cost of losing the suit. This gave the High Court of Admiralty, a civil law court, a significant advantage over the common law courts where such collective suits were not permitted. That the Admiralty court allowed foreigners to sue, as well as permitted cases *in rem* meant it was a good place for seafarers to make their claims.[23]

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[19] Rossum, *Werkers*, 190-196. Manon van der Heijden and Danielle van den Heuvel, "Sailors' families and the urban institutional framework in early modern Holland," *The History of the Family* 12, no. 4 (2007): 301-302. They note that before 1682 *maandbrieven* could be given to non-kin too.

[20] Christiaan van Bochove and Ton van Velzen, "Loans to salaried employees: the case of the Dutch East India Company, 1602-1794," *European Review of Economic History* 18 (2013): 26. Christiaan van Bochove, "Seafarers and Shopkeepers: Credit in Eighteenth-century Amsterdam," *Eighteenth-Century Studies* 48, no. 1 (2014): 67.

[21] Soldiers in the Dutch army stationed in the provinces of the Republic were much better off when it came to wage payment – the provinces were responsible for paying them which they generally did in order to avoid mutinies. When they did not, officers could advance wages to their men or military solicitors advanced wages to the commanders in return for a monthly salary. Klooster, *The Dutch Moment*, 138, 139.

[22] Dekker, "Labour Conflicts," 379, 406.

[23] George F. Steckley, "Litigious Mariners: Wage cases in the seventeenth-century Admiralty Court," *The Historical Journal* 42, no. 2 (1999): 319-320, 323. Cases *in rem* allowed seamen to make claims against the ship and cargo rather than the person of the captain which mitigated against the potential losses from a defendant who was penniless, or absconded. Cf. wage conflicts in Livorno where the Tuscan authorities "sought to avoid the duty of resolving law suits between foreigners, favouring private accommodation in such cases, achieved most of the time under the auspices of foreign consuls." Andrea Addobbati, "Until the Very Last Nail: English seafaring and wage litigation in seventeenth-century Livorno," in *Law, Labour and Empire: Comparative perspectives on seafarers, c. 1500-1800*, ed. Maria Fusaro, et al. (Basingstoke: Palgrave Macmillan, 2015), 59.

Richard Blakemore's and Steckley's research indicates that mariners succeeded in using the courts in England to make their claims, receiving favourable verdicts from judges in numerous cases of wage litigation. In contrast to Marcus Rediker – whose position is summed up by Blakemore in the phrase "sailors fought the law...and the law won" – Blakemore shows very clearly that mariners not only made use of the courts, but "litigated frequently, cleverly, and successfully, and that both the High Court of Admiralty and the Trinity Houses acknowledged, and protected, the legal rights of sailors."[24] Yet Blakemore still comes to the conclusion that wage litigation was a last resort, when other means of dispute resolution had proven ineffective. This, however, did not diminish its significance:

> The widespread use of these legal arenas by seafarers is significant, too, because it confirms that seafarers of all social ranks not only actively sought to protect their rights through law, but also participated in the negotiation through which the broader framework of seafaring custom and maritime law was defined.[25]

The pattern which seems to emerge from the cases discussed by Blakemore and Steckley is that crew sued captain, mariners versus masters, merchants or ship-owners. This division of the seafarers on board a vessel is not seen in the VOC and WIC cases from the High Court in the Republic, because the companies' chambers were the employers, and the wage payers. In such cases, captains were themselves chamber employees and sued alongside the officers and crew of company vessels. The division between captain and crew which is recurrent in the High Court of Admiralty records, and likely in other branches of maritime employment in the Dutch Republic, is not reflected in the High Court of Holland and Zeeland's records.[26]

Similar to the High Court of Admiralty cases, the High Court of Holland and Zeeland suits dealt with both custom, or common practice, and written terms of employment, namely the *artikelbrief* under which seafarers sailed. In some of the cases which follow, litigants argued for the implementation of maritime custom. In other cases, binding written stipulations between employer and employee set out in the *artikelbrief* were also cited in the arguments made. In the cases which follow in this chapter, wages were refused by the companies on the grounds of both custom and *artikelbrief*. That he companies invoked both points to the different kinds of legal principles which were discussed in court, and used as the bases for arguments there. For the English case, Blakemore argues that "custom must be understood within the legal system, not outside or against it; and

[24] Richard J. Blakemore, "The Legal World of English Sailors, c. 1575-1729," ibid., 101; 120.
[25] Ibid., 116, 117.
[26] Steckley only mentions one example of a case involving the English East India Company. In a case from 1629 a sailor was accused of mutiny but the court awarded him full wages in spite of that, and instructed him to apologise to the company directors. Steckley, "Litigious Mariners," 334. It is possible that the vast majority of wage issues between the EIC and her employees were dealt with in-house, that is, in the company's court.

that due to the importance of custom, seafarers had more agency in the development of both maritime law and employment practice than is usually supposed."[27]

The seafarers and company employees around whose wages this chapter revolves are those who were employed by chambers in the Republic and shipped overseas. According to Jan Lucassen, such men made up the largest number of VOC workers.[28] Men recruited overseas do not feature here: their wage disputes should have been heard in the companies' Councils of Justice. Both companies were supported by the Dutch army and navy at various points - men employed by the Admiralties and sent by the States General to defend VOC and WIC ships and fight their wars. With the exception of the soldiers who fought in Dutch Brazil (1640s), these men were not technically company employees and thus if they did dispute their wages their petitions and legal challenges would have been against other institutions, not one of the companies. Like local recruits, they do not feature in this chapter.

When considering the litigants, the wage earners themselves are perhaps not as prominent in this chapter as may have been expected. The reason behind this was the tranferability of company employees' earnings, which opened a range of opportunities to men in company service, even before they had set sail from the Republic.

Present 'uses' for future earnings

The men who were taken into VOC employ by the chambers located in the Republic, were paid the larger part of their monthly wages when they were discharged. During their contract periods, wages were recorded as credit in individual current accounts kept on board each company ship.[29] Notarial deeds attest that these future earnings had a number of present uses for the employees, turning wages into a useful financial instrument beyond only their future value when paid out. These uses were based on the transferability of wages – both the set monthly wage (*maandgeld* or *gagie/gages*) and any share of loot (*buitgeld*) from the capture of enemy ships. The effect of the transferability of wages was to widen the pool of litigants in wage cases which were heard against the Dutch East and West India Companies. Thus, it was not only both companies' servants who claimed their wages, but also the relatives of employees, legatees, and purchasers of credit. Cases analysed in the later sections of this chapter bear this out.

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[27] Blakemore, "The Legal World of English Sailors, c. 1575-1729," 102.

[28] Lucassen, "A Multinational," 14. The other three categories of recruits identified by Lucassen are the VOC chambers' employees to work on wharves and in warehouses and offices in the Republic; free Asian and African workers recruited overseas as sailors, soldiers, artisans; and unfree workers, namely convict labourers and slaves, and the forced labour extracted from local populations. See also Rossum, *Werkers*, 199-200. For the WIC, it should be remembered that the company recruited overseas as well – in particular, soldiers in Brazil. On the daily lives of WIC soldiers there and the ways in which they supplemented their meagre wages see Bruno Romero Ferreira Miranda, "Daily life and resistance at the Dutch West India Company army in Brazil," (forthcoming).

[29] The individual accounts for company employees who sailed for the Amsterdam chamber can be accessed in Nationaal Archief, Den Haag, Verenigde Oost-Indische Compagnie (VOC), nummer toegang 1.04.02, inventarisnummer *5689-6842*, Scheepssoldijboeken.

The foundational element on which all other possibilities rested was the fact that power of attorney could be signed over to someone else, giving them the right to collect an employee's wages from the directors of the company.[30] This provided the companies' servants with a range of opportunities to use their wages before they were paid out. Transferability allowed employees to turn non-liquid wages into cash on the one hand, and on the other hand, it enabled credit circulation. As will become clear, the opportunities provided by the transferability of wages were not limited to the Republic; they extended over the localities in which company servants worked.

In 1625, Fernando Cardozo, a Portuguese man living in Amsterdam, was hired by the WIC. He gave power of attorney to his mother, Catharina de Lima, to receive his wages from the directors of the WIC chamber Amsterdam.[31] The transferability of his wage gave Cardozo the opportunity to care for his mother while he was overseas. WIC employees could use *buitgeld* in the same way.[32] This resembles very closely the practice of money letters (*maandbrieven*) used by the VOC. *Maandbrieven* gave VOC employees the opportunity to have part of their wage – up to three months' worth per year – paid out to a family member in the Republic while the employee himself was overseas.[33]

In addition to using future earnings to provide for a family 'at home', employees of both companies used their future earnings to pay off their debts, large and small. WIC employees went to notaries to give power of attorney to the creditor who could then collect the company servant's wages from the chamber. The size of the employees' debts varied greatly.[34] On the lower end of the spectrum, men who arrived in the port cities of Holland and Zeeland in search of work, incurred debts to the men and women who offered them board and lodging, many of whom were recruiters known as soul sellers (*zielverkopers*). Research has confirmed the indebtedness of VOC and WIC employees on the eve of their departures.[35] The *zielverkopers* were reimbursed out of the VOC employee's first wages, using what was essentially an IOU (*schuldbrief*); these were also known as *transportbrieven* and could be valued up to *f*150.[36] WIC employees made use of

[30] Examples of this abound. For instance, Pieter Aldrof, merchant in Amsterdam, gave general power of attorney (*een algemene procuratie*) to Gerhardt van Hetling, also an Amsterdam merchant. Aldrof was about to leave for Brazil in the service of the WIC. The deed included the specification that van Hetling could collect Aldrof's wages (*gages en maandgelden*) from the directors of the West India Company. SAA, NA, 1085, 372, 1648-12-16. For more examples see SAA, NA, 1300, 115, 1651-07-01; 853A, 18v, 1626-05-27; 1291, 182v, 1645-10-02; 1303, 124, 1653-05-10; 994B, 10, 32v, 1639-08-28.

[31] SAA, NA, 640, 1625-06-02. The same details are recorded in SAA, NA, 643, 1625-06-02.

[32] Before he left for Brazil as supercargo on board the WIC ship the *Koning van Zweden*, Jacob Jansz gave his father power of attorney. It entitled him to collect Jansz's wages and loot. SAA, NA, 9505, 730B, 529, 1638-03-01. An earlier example of transferring the right to collect loot is SAA, NA, 8870, 549A, 290, 1624-11-06.

[33] Heijden and Heuvel, "Sailors' families," 301. They note that before 1682 *maandbrieven* could be given to non-kin too.

[34] To illustrate the range: Pieter Thijssen owed Gerrit Gerritsz *f* 55. SAA, NA, 386, 17e reg., 122, 1632-10-08; on the other end of the spectrum, Huybert van Gageldoncq owed Jacob Cohen *f*1700. SAA, NA, 1706B, 1527, 1656-12-06.

[35] Rossum, *Werkers*, 190-196. Klooster, *The Dutch Moment*, 117.

[36] Bochove and Velzen, "Loans to salaried employees," 26.

notaries to commit to paying their debts out of future earnings from monthly salaries and loot.[37]

According to Manon van der Heijden and Danielle van der Heuvel, "in the seventeenth century most requests by sailors to pass on part of their salaries to other persons involved payments to soul sellers."[38] Some men used money letters and IOUs simultaneously causing issues of priority. In an attempt to protect the families of VOC servants, in 1682 the VOC gave priority to the payment of money letters over IOUs.[39]

Money letters and IOUs were drawn up in-house by VOC servants. The company had printed forms which employees could fill out in the VOC's pay office (*soldijkantoor*). It is quite possible that the VOC had quickly formalised what was previously a common practice amongst its employees. From the records, it seems that there was no equivalent for WIC servants – the WIC did not have an institutionalised process of passing on wages via money letters and IOUs. This goes some way in explaining the abundance of notarial deeds with which WIC employees made over parts of their salaries to family members and creditors. In particular, Amsterdam notarial deeds demonstrate that like their VOC counterparts, WIC servants promised future earnings to their family members and used them to pay off debts. Amsterdam notary de Bary drew up a deed for Huybert van Galgedoncq in 1656. Van Galgedoncq was about to sail to Guinea in the service of the Amsterdam chamber of the WIC, in the position of company agent or factor (*commies*). He amassed a significant debt to the *drooggasterijhouder* Jacob Cohen, amounting to *f*1700, which would be paid out of his company wages.[40] This example also serves as a reminder that transferring wages was not a tool used only by penniless sailors. Thus, unpaid wages of both companies were transferable; for the VOC this was insourced to the company salary office and for WIC employees, this took place before notaries.

According to the literature, VOC IOUs were transferable too – those who bought up the company servants' debts came to be known as soul buyers.[41] That is, there was a secondary market for IOUs. This was not peculiar to the VOC – notarial deeds drawn up by WIC employees who used their wages to pay off their debts could also be sold to others. WIC employee Pauwes ceded his future earnings to repay his debt to Jansen, with the deed specifying that Jansen, or the holder of the deed, had the right to collect the debt, surely an indication that Jansen could use or sell the deed to someone else who would then draw

[37] SAA, NA, 9539, 757, 99v, 1630-07-04. In July 1630 Claes Claesz van Rostok made a statement before the Amsterdam notary Rooleeu in which he ceded his future earnings, including those from loot, to Thomas Thomasz. The reason for this was Claesz's debt to Thomasz, incurred in making ready for a previous voyage as well as the one he was about to undertake. The deed specified that the debt included the cost of upkeep and advances which Claesz had received from Thomasz. Thus, it is likely that Claesz had been dependent on Thomasz for board and lodging in Amsterdam while he waited to begin company service and for the payment of the necessities for the voyages. Claesz owed Thomasz *f*95:13. The deed further specified that Thomasz had not been paid from Claesz's previous earnings on board *De Witte Leeu* because of other debts, perhaps an indication that other creditors had priority over Thomasz. For another example, see SAA, NA, 1568, 99P, 1641-03-18.

[38] Heijden and Heuvel, "Sailors' families," 301. On VOC recruitment, *zielverkopers* and *schuldbrieven*, see also Rossum, *Werkers*, 190-196.

[39] Heijden and Heuvel, "Sailors' families," 301-302.

[40] SAA, NA, 1706B, 1527, 1656-12-06.

[41] Heijden and Heuvel, "Sailors' families," 301-302. Lucassen, "Zeevarenden," 135.

Pauwes's wages.[42] Van Bochove and van Velzen state that the intermediaries who bought up the *transportbrieven*

> mobilized funding and made possible a deep penetration of credit markets into society by linking elites to ordinary workers in an until-then-unprecedented way... In combination with the near removal of moral hazard risks, this made possible larger loans, longer terms, and lower annualized percentage rates.[43]

A secondary market also existed for the wage accounts (credit) of company employees. This market for sailors' wage accounts in the Republic comes into focus in the case between Reijnier de Wolff and his associates on the one side, and the VOC Chamber Amsterdam on the other, which is discussed at length later in this chapter. The same is true of WIC wage accounts – after the fall of Brazil many of the returnees, mostly officers and soldiers, claimed payment of wage credit from the WIC and the States General, which Wim Klooster indicates amounted to a *f*1 million. Some of these men were "so desperate that they sold their claims, never receiving the full amount."[44] This indicates that a secondary market existed for WIC wage accounts too.

In addition to using wages to pay off debts, wages could be used as collateral in securing loans. The term used in the notarial deeds, which comes up in one of the court cases, is *onderpand*. A deed from 1632 reveals how this mechanism worked. Pieter Thijssen from Haarlem was about to sail to Guinea as principal carpenter (*oppertimmerman*). As collateral for a loan of *f*55 he gave his creditor Gerrit Gerritsz three packs of clothes, three frilled neckpieces and two handkerchiefs as well as his future earnings.[45] An example of wages used as collateral in the early eighteenth century reinforces this practice. In 1705 a group of men in the employ of the WIC used their wages as collateral for a loan of *f*1500. Their wages (*maandgelden*) were specified as *onderpand* in the deed. The WIC men were embarking on a slaving voyage: they were going to sail to Elmina aboard *De Juffrouw Cuira*, load slaves and transport them across the Atlantic to the island Curaçao, and from there return to Amsterdam. A month after their return they had to repay their creditor, according to the loan conditions.[46] The various ways in which wages could be used were a direct result of their transferability via power of attorney. The fact that wages could be collected by someone else made them a flexible and valuable tool in the creation of credit.

This is also seen in the sale of wage accounts – credit in the Republic could be made liquid through sale of accounts in the colonies. The VOC forbade selling or pawning wage

[42] SAA, NA, 1568, 99P, 1641-03-18.
[43] Bochove and Velzen, "Loans to salaried employees," 20. In their article van Bochove and van Velzen elaborate on the risks of buying *transportbrieven*, how they were discounted when purchased, and the ways in which the VOC tried to ensure that much of the debt could be collected.
[44] Klooster, *The Dutch Moment*, 91.
[45] SAA, NA, 386, 17 e reg., 122, 1632-10-08. For another example of collateral specified in a notarial deed, see SAA, NA, 2207, 544, 1659-09-30 (Bottomry).
[46] SAA, NA, 5769A, 141, 1705-03-24.

accounts, to prevent company employees from taking part in illegal private trade.[47] Yet the transferability of wages through IOUs, their use as collateral and the possibility, whether legal or not to sell accounts, had the effect of easing liquidity problems for employees of various ranks. Secondary markets existed for wage accounts in the Republic and overseas.

Transferability of wages also extended to inheritance – VOC and WIC employees' credit in the companies' books could be paid out to their heirs when employees died with or without a will. This required legal innovation from the companies as they sought means to deal with the estates of salaried employees who died abroad. Heirs and assets were located both in the Republic and abroad, details and accounts were not always readily to hand, and decisions had to be made regarding which inheritance law to apply to cases.[48] The most immediate effect of the transferability of wages via inheritance was to widen the pool of litigants in Holland and Zeeland courts to include employees' kin, both 'Dutch' and foreign.

Analysis of Amsterdam notarial deeds drawn up by WIC employees has borne out the equivalent uses to which employees of both companies could put their wages. At the core of this was the transferability of wages in the form of monthly salaries as well as loot. The difference was that the VOC insourced much of the work of notaries by having money letters and IOUs drawn up in the company's pay office. The consequence of the transferability of wages through legal documents was the variety of claimants who sought payment of wages from the companies. How company servants as well as the holders of wage accounts made their claims from the companies is the issue to which we now turn.

Escalating wage claims against the companies

Wage claims against the Dutch East and West India Companies were made by the wage earners themselves, as well as by those who were granted, inherited or purchased wage accounts. The former can be termed direct claims; the latter indirect claims. Both kinds of claim began at the employer – the WIC or VOC chamber – and escalated from there.

The first step in making wage claims was to go to the men who paid out the wages – the chamber directors. Company employees appeared before the meetings of the chamber directors requesting payment of wages. It appears that the standard procedure was for the cashier (*cassier*) to assess the claim before a decision was made whether or not to pay the claimant. The importance of this investigation was borne out in a number of requests which were denied on the basis of an employee's misbehaviour. For instance, on Monday 4 January 1672 Pieter Jacobsen van Grimingen and Meerten van Ee stood before the assembled directors of the WIC chamber Zeeland where they requested wages earned when they sailed to Guinea on the *Zeelandia* in 1663. They were told to return in eight days, during which time the chamber *cassier* Goliath would look at their accounts.

[47] Bree, *De rechterljke organisatie*, 46-47.

[48] Martine Julia van Ittersum, "The Long Goodbye: Hugo Grotius' justification of Dutch expansion overseas, 1615-1645," *History of European Ideas* 36, no. 4 (2010): 401.

This proved disadvantageous for the two men: it was found that both men were absconders and thus their wages were confiscated. When the men returned to the chamber the following week, the directors resolved to dismiss their claim as they were "untrustworthy souls".[49] Similarly, Cornelis Berger's claim to wages earned as a skipper on the company ship *Poelwijck* was denied when it was discovered "that he committed much illegal trade, against his solemn promise and own signature, and by his evil behaviour and...untrustworthiness had brought the company significant damage."[50] Wim Klooster states that this investigation of employees' behaviour before payouts were made was the common procedure.[51]

Indirect claims were made in the same way. Men and women presented themselves to the chamber meetings, where *maand-* and *schuldbrieven* were exhibited to back up their claims.[52] Some of these went smoothly such as for a soldier's wife who received the wages her husband had earned in Elmina.[53] But sometimes these claims were refused. Appearing before the same chamber as van Grimingen, van Ee and Berger, widow Perdij's claim to her husband's wages was refused.[54]

There appears to have been another kind of indirect wage claim at the chambers, that which was made by a broker. In 1649, after his return from WIC service in Brazil and New Netherland, Gerrit Hendricxss. from Molkwerum (on the IJsselmeer, Friesland) had a notarial deed drawn up in which he transferred power of attorney to Jan Rietvelt in order that Rietvelt could make a claim against the WIC for the payment of wages earned by Hendricxs on board *De Vergulde Ree.* Rietvelt was recorded as a broker (*makelaar*). This points to the possibility that claiming wages was something of a business, and that there may have been individuals who specialised in such claims.[55] It is possible that something similar took place among the family members of deceased VOC employee Hans Broen. Broen's brother, the Amsterdam merchant Hendrick Broen, signed over power of attorney to Gysbrecht van Beresteijn in Enkhuizen to claim the wages that Hans had earned as company agent on board the ship *De Maecht van Enkhuizen* which sailed with Admiral van Warwijck's fleet in 1602.[56] What is not clear in the deed is whether this was

[49] Original: "*als trouweloose sielen af te wijsen."* NL-HaNA, OWIC, 1.05.01.01, inv. nr. *31,* Notulen K. Zeeland, scan 2 (Monday 4 Jan 1672); scan 6 (Monday 11 Jan 1672).

[50] Original: "*dat hij veel ongeoorloofden handel tegens sijn solemnele belof ende eijgen onterteijckeninge hadde gepleegt ende voort de compagnie door sijn quad comportement ende ongehoo*[?] *trwoulоosheijt ende seer importante schade toegebracht*." NL-HaNA, OWIC, 1.05.01.01 inv.nr. *31,* Notulen K. Zeeland, scans 73-4 (16 May 1672).

[51] Klooster, *The Dutch Moment*, 91-92.

[52] To family members: NL-HaNA, OWIC, 1.05.01.01, inv. nr. *31,* Notulen K. Zeeland, scans 33-4 (Monday 21 March 1672). To named persons via *maandbrief*: NL-Ha-NA, OWIC, 1.05.01.01, inv. nr. *31,* Notulen K. Zeeland, scan 36 (28 March 1672).

[53] NL-HaNA, OWIC, 1.05.01.01, inv. nr. *31,* Notulen K. Zeeland, scan 44 (14 April 1672).

[54] NL-HaNA, OWIC 1.05.01.01, inv. nr. *31,* Notulen K. Zeeland, scan 15 (Monday 1 Feb 1672).

[55] SAA, NA, 2278 II, 63-64, 1649-12-28. Notary: J. de Winter. The deed also provides all the details of Hendrickxs's career in the WIC starting as *hoogbootsman* in 1643 on his way to Brazil and ending in the wreck of *De Prinses* while en route from new Netherland to the Republic in 1647. This is the only deed I have come across in which the use of a broker is specified, but my search through the deeds was far from exhaustive.

[56] The only ship in the VOC ship database which matches this name is the *Maegd van Enkhuizen* which was built in Enkhuizen in 1602 for the VOC chamber there and set sail from Texel the same year, arriving in Bantam in

a claim to be made in the chamber or if the matter had already escalated to the point of a legal suit.

Direct and indirect wage claims from the chambers of the VOC and WIC could also take the form of collective action. Rudolf Dekker comments that there were a number of occasions on which protests by VOC and WIC sailors turned into riots in the city of Amsterdam. According to Dekker this was unexceptional in the context of early modern labour relations: "conflicts between workers and employers were a regular phenomenon in preindustrial Holland."[57] He relates an example from 1629 at which time sailors attacked the VOC's head office in Amsterdam in order to claim a larger share of the Spanish silver fleet booty. This serves as a reminder that sailors' remuneration was in fact a parcel of payments, one element of which was their monthly wage. Dekker recounts a second example: on their return from the east, some VOC sailors organised a demonstration at the company's headquarters; one of the leaders stated "that they only wanted to receive their pay." Arrests were made and two of the leaders were in fact publicly hanged.[58] Wim Klooster recounts various examples of sailors and soldiers in service of the WIC violently claiming their wages, including an episode in which sailors and soldiers together tried to loot the silver stored in the *West-Indisch Huis* in Amsterdam based on the rumour that they had been denied their proper share of the silver fleet booty.[59] Furthermore, sailors' wives petitioned the Admiralty of Amsterdam and then appeared before the States General requesting payment of their husbands' wages earned on their voyage to Brazil in 1651. While the States General ordered the money be made available, who was responsible for payment was unclear. Two months later, Klooster noted, the chairman of the States General complained that the women had been to his home requesting the wages be paid out.[60]

For the claimants involved in wage disputes, their livelihoods were at stake, for the poorest of them their very material existence relied on such payouts.[61] There was much at stake for the companies too, at least for the WIC. Klooster argues that the consequences of "deprivations" suffered by WIC servants in Brazil "were grave." Non-payment of wages meant that the men on the ground who were supposed to create and defend empire overseas did not; Brazil was lost and with the colony went the political empire.[62]

When claimants received no payment from the chambers, their claims could be pursued in the legal arena. Mediation and notarised settlement was a means of conflict resolution used by parties in labour contracts in the maritime sector.[63] However, as far as

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1603. http://www.vocsite.nl/schepen/detail.html?id=11565 (accessed 2015-05-28). Broen's claim included *f*2400 worth of shares which his brother Hans had invested in the VOC through Jacob Jacobsz Hinloopen.

[57] Dekker, "Labour Conflicts," 379.

[58] Ibid., 406.

[59] Klooster, *The Dutch Moment*, 142.

[60] Klooster, "De bootsgezellen van Brazilië," 49-50.

[61] NL-HaNA, OWIC, 1.05.01.01, inv. nr. *31,* scan 15 (Monday 1 February 1672).

[62] Klooster, *The Dutch Moment*, 143, 145.

[63] For instance, in January 1674 a dispute between on the one hand Dirck Jansz Klinckert, *schipper* of the ship *De Vrede*, and on the other hand the *reders* of the same ship, represented by Amsterdam merchant Anthoni Wilmerdoncx, was settled by mediators Gerard Hamel and Michiel van Ameland. One of Klinckert's demands was that the *reders* pay him his wages. The mediators settled the dispute: The *reders* had to pay Klinckert the

Amsterdam notarial deeds indicate, it was not used in disputes between the companies and their employees.[64] What we see in the court records, is that wage disputes with the companies were pursued at all levels of the judicial system, from city courts, to the provincial and supra-provincial level. The remainder of this chapter focusses on those disputes which were taken to the High Court; the use of lower courts is demonstrated by charting the progression of cases through the legal system of the Republic, culminating in proceedings before the High Court.

Court cases

Inheritance

One of the most frequently-quoted statistics about VOC employees is that only one third of the men who went to Asia in company service actually returned.[65] Many died on the Cape Route and still more did not survive the malarial conditions of Batavia.[66] We should also not gloss over the fact that the VOC was engaged in open warfare in the early years and intermittently after the 1660s, which claimed the lives of company servants.[67] WIC servants met similar ends in company employ: mortality rates on the West Coast of Africa were notoriously high, and war on land and sea claimed numerous lives.[68] Death at sea or in company colonies has been studied from the point of mortality rates, and the companies' near insatiable labour needs, but not yet from the point of view of the legal questions surrounding inheritance in the tying up of estates which belonged to men who died in service of the companies. Part of the complexity of such cases arose from the tyranny of distance: information was needed in the Republic about circumstances in Asia or the Atlantic to assess the legitimacy of claims on estates. Whether or not some claims were given priority over others when an estate was not large enough to cover all of them also had to be figured out. Moreover, which law of inheritance applied in tying up disputed estates – the *aasdomsrecht* of Holland above the rivers, or the *schependomsrecht* of below the rivers?

Inheritance was a consequential issue which touched on the nature of the Dutch empire and state-building in the Republic. During 1640, High Court judge Nicolaas van

sum of *f*1000. They also had to pay the food and drinks bill which was racked up in the local tavern while the negotiations were going on! SAA, NA, 3221, 13, 1674-01-3. For another such dispute settled by mediators, see SAA, NA, 200, 538v-84v, 1620-05-09.

[64] This conclusion is based on my reading of a selection of Amsterdam notarial deeds. Thanks to Cátia Antunes for sharing her database of deeds with me. If further research does indicate that this method of conflict management was used by company employees, I would expect that the States General had a hand in bringing (pressuring?) the parties to the negotiating table.

[65] Bruijn, "De personeelsbehoefte," 238.

[66] On mortality rates on VOC ships in the seventeenth and eighteenth centuries see Gaastra, *The Dutch East India Company*, 80-83. Bruijn, "De personeelsbehoefte," 218-226.

[67] On the centrality of violence in the 'first phase' of VOC operations, see Knaap, "De 'core business' van de VOC."

[68] On the high number of deaths on the West Coast of Africa see Heijer, *De geschiedenis van de WIC*, 128. Klooster discusses the involvement of sailors and soldiers in battles in Brazil and the illnesses from which they suffered. Klooster, "De bootsgezellen van Brazilië," 50-52. Mortality rates have not been calculated.

Reygersberge (also Reigersberche) and famous legal scholar Hugo Grotius exchanged letters on the subject of inheritance law overseas. Van Reygersberge asked Grotius to consider the validity of wills and testaments drawn up by VOC and WIC servants overseas, apparently prompted by a case of a high-ranking VOC servant who had made his will and died in Batavia but had lived most of his life in Zeeland. The High Court judge indicated that until 1640, practice had been to apply the laws of the place of origin of the deceased when someone died *ab intestato*. In the absence of regulations made by the States General and the VOC on this point of law, the practice he described had been followed. In the hypothetical case that van Reygersberge recounted, should the company servant's will be considered valid? In his response to van Reygersberge, one of the points that Grotius considered was whether or not company territories could be considered conquests. If yes, then they would take the law of the conqueror. Grotius was doubtful that the company territories could be considered conquests, but he recognised the authority of the States General to write laws for their subjects, in lands they considered theirs. These 'lands' seemingly included VOC and WIC conquests. Martine van Ittersum concludes that "[e]ven Grotius could not escape the conclusion that territorial expansion overseas and state-building at home went hand-in-hand."[69] In legislating inheritance matters then, and in how cases before the High Court were resolved, empire-building and state-building were part of the same process.

Inheritance cases were significant for a second reason, which lies in the nature of the litigants. Inheritance issues which involved wages were often pursued by parties made up of more than one person: heirs as a collective would sue for their claims on the estate.[70] Part of the reason for this may have been the attractiveness of sharing the burden of court fees between them, but surely it was also a calculated decision based on the strength they saw in collective action. A 1696 notarial deed from Amsterdam indicates that the van Uchelen family gave power of attorney to two of their number to claim back wages on behalf of all of them. The two men appointed were brother and brother-in-law of the deceased, uppermerchant (*opperkoopman*) Hendrick van Uchelen, who had died in WIC employ in Elmina. They claimed his wages from the WIC chamber Amsterdam.[71] As already noted, the chamber was the first place to make such claims. When the heirs' claims were not granted there, they could – and did – proceed to court.

Two cases will be analysed in detail. The first involved the case brought by a single litigant, Hans Boije, against the VOC chamber Amsterdam. There are two particularly striking points of this case which will be analysed here – its progression through the courts, and the explanation of VOC custom regarding inheritance. The second case involved two heirs, neither of whom was resident in the Republic. The case indicates that

[69] Ittersum, "The Long Goodbye," 401.

[70] See for instance Grietje Jacobs who represented the heirs of Jan Cornelis Bloen versus the VOC chamber Amsterdam, children and heirs of Pieter de Witte which was fought over de Witte's wages. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *744* (1652)*,* Geextendeerde Sententie, scans 145-53. Jan Cornelis Bloen, previously known as Jan Fijcke, originated in the area near Hamburg but fled to the Dutch Republic after he escaped arrest for killing a man.

[71] SAA, NA, 3329, 54, 1696-01-27.

judicial process was available to foreigners in the Republic but that 'local' creditors had a privileged position in making claims on the estate.

Hans Boije vs. VOC Chamber Amsterdam

Juriaan Boije (also de Boij, de Boijs) was a Dutch East India Company employee. He sailed to Asia on board a ship named the *Goude Leeuw* on which he served as trumpeter until 20 December 1626.[72] He then transferred to the ship *Zirck Zee*, of the Zeeland chamber, continuing as trumpeter.[73] In this function he probably earned *f*14 per month.[74] In late July/early August 1627 Juriaan Boije became ill. Surely suspecting death was close, he made a will, witnessed by Pieter Christian and Nicolaes Hem, both under merchants (*onderkoopman*) on the same ship *Zirck Zee*. In his last will he left sums of money and a few possessions to seven individuals who were named and lastly, to his brothers and sisters. Thereafter, Juriaan Boije died.[75]

Juriaan Boije's death was the catalyst for a legal battle in the Republic which was only wound up in 1645. Juriaan's brother Hans sued the directors of the Dutch East India Company chamber Amsterdam to claim his share of the wages earned by Juriaan in company service. The parties pursued the case from city to provincial level, and then to the High Court, following the trajectory set out in Figure 1 (Introduction). The conflict began because the directors refused to pay Hans Boije the share of the inheritance which he believed was rightfully his, but this initial claim which must have taken place in the meeting of chamber directors has not left a trace in the judicial archive. Hans Boije sued the Amsterdam chamber directors in the Amsterdam court (*Gerechte van Amsterdam*) where he received a favourable verdict in 1643.[76] The chamber was sentenced to pay Hans Boije all the wages which had been earned by his brother Juriaan in company employ. The chamber felt aggrieved by the sentence and thus appealed it in the Provincial Court, the Court of Holland. On appeal, it was the company which came out victorious.[77] The following year, Hans Boije began the third instance of the case when he was granted leave to appeal the decision of the Court of Holland in the High Court. In December 1645 the High Court passed its sentence: the Court of Holland's sentence was nullified (*doet te niet*) and the VOC was judged not to have been aggrieved by the sentence passed in first instance in the Amsterdam court. Furthermore, the VOC was condemned to pay the legal

[72] http://www.vocsite.nl/schepen/detail.html?id=11714 The Amsterdam Chamber's ship *Gouden Leeuw* set sail in 1625 from Texel and was bound for Surat. It is most likely that Juriaan Boije was on board this particular vessel. As trumpeter, he was responsible for signalling the change in watch. Lucassen, "Zeevarenden," 137.

[73] Most likely to have been the ship built in 1616 in Middelburg for the Zeeland Chamber. It was used until 1627/8. http://vocsite.nl/schepen/detail.html?id=11978

[74] In 1621 the Admiralty of Zeeland paid a trumpeter *f*14 per month while an ordinary seaman received *f*6 per month. Bruijn, *The Dutch Navy*, 58.

[75] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *737 Geextendeerde sententies scans 178-9 [unpaginated].*

[76] In one part of the High Court's sentence the Amsterdam court's sentence was dated 7 April 1633, in another 7 April 1643.

[77] The sentence is dated May 1643, only one month after the later date of the Amsterdam court's sentence. This seems impossibly quick considering that some cases dragged on for years, even decades. It might be an indication that the Amsterdam Court passed a verdict in 1633 rather than 1643.

fees incurred in the Court of Holland. Hans Boije was victorious in his dispute with the VOC Chamber Amsterdam.[78]

We can assume from the way that this case was pursued that Hans Boije evaluated the possible gains of litigation as outweighing the legal fees he could incur. What exactly the court's fees were for such cases (in each instance) has not yet been established.[79] Based on the sums which Juriaan Boije willed to others and his total wage credit in the chambers, the sum claimed in the case was likely small. Juriaan named seven heirs in the will he signed before his death, and bequeathed them sums of around *f*50, with the exception of the first recipient who was to receive *f*265:13:5. His brothers and sisters were not named in the will, but as his heirs were left *f*6. The sum of bequests was stated in the court documents to be *f*631:5. Juriaan's total credit in the Amsterdam and Zeeland chambers, based on the figures from his three shipboard accounts, was stated as *f*629:2:5, not enough to cover the bequests. [80]

There was more than money at stake for the VOC. According to the VOC directors, the Amsterdam Aldermen (*schepen*) had not taken into account the VOC's 'solid defense' (*deuchdelijcke defensie*) of their refusal to pay Juriaan's wages to Hans Boije. The VOC's refusal before litigation was based on the company's 'practice and custom' (*gebruijck ende gewoonte*): when a 'foreigner' died in company service and was indebted to 'locals' or had bequeathed them something, the company would not pay out his wages to his heirs – also 'foreigners' – but rather first pay the outstanding debts and inheritance to 'locals'. By 'locals' we should understand the company to mean subjects of the States General who were resident in the Republic. This was intended to prevent 'locals' from having to go to 'foreign lands' to claim that which had been left to them.[81] What this custom reveals is the VOC's protection of locals over foreigners (*ingesetenen* contrasted to *uitgesetenen*) and priority given to creditors before heirs. In accordance with this practice, a number of the named heirs who were locals had received payments from the company in the early 1630s. Dutch expansion into the Indian and Atlantic Oceans had brought with it numerous legal conundrums, not least how to deal with inheritance questions when individuals died in service of the companies overseas.[82] This was further complicated by the fact that neither the company servants nor their heirs were necessarily Northern Netherlanders, or even residing in the Republic. The directors' explanation of their 'practice' demonstrates the creativity of the company in dealing with novel legal issues associated with expansion. It is creative in the sense that it was a clever way to solve a practical

[78] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *737* scan 178-82.
[79] The only calculations of costs that have been made were for cases involving the Portuguese Nation, 1675-1725. As a proportion of the value of the claim, costs varied from 0,1% to the exceptional 184%, but Post concludes that in general, the cost was a low percentage of the sum claimed. Post, "De Portugese natie," 70-76. Steckley has calculated that proceedings in the High Court of Admiralty, London, would have cost mariners approximately £8, equivalent to half a year's wages. This he suggests would have been prohibitively high for individual claimants. Steckley, "Litigious Mariners," 319.
[80] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *737* [scan 179]. Of the seven people named, one was from Haarlem, one was from the same place as Juriaan himself and the others' origins/locations are not included or cannot be connected to specific towns or regions.
[81] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *737 [scan 179].*
[82] Ittersum, "The Long Goodbye," 401.

problem, but creative also in the sense that a new and repeated practice was coming into being.

Boije's case against the VOC progressed from the city court to the Provincial Court and then High Court. The city court ignored the VOC's practice and ruled in favour of Boije; the Provincial Court upheld the company's practice; and the High Court dismissed the VOC's practice again reverting to the same verdict which had been reached by the city court in Amsterdam. How to tie up estates involving foreigners remained a problem for the VOC into at least the 1680s, as the following case shows.

Samuel and Metgen Elders vs. VOC Chamber Amsterdam

The Amsterdam chamber of the VOC faced another inheritance case a few years later. Fredrich Elders was employed as a petty officer by the VOC Chamber Amsterdam and sailed to Asia on board the flute *Het Witte Peert* in 1646.[83] In 1655 Fredrich Elders died in Asia. None of the Elders family was from the Republic: Fredrich originated from Oldenburg (now in north-western Germany) and his heirs, brother Samuel and sister Metgen, were living in Hamburg at the time of their dispute with the VOC.[84] The case reinforces the fact that the courts in the Republic were open to suits from foreigners.[85] It also brings into focus the asymmetry of information which had a critical bearing on the case.

The Elders case was fraught because the assets of the deceased and his heirs were located in Asia, the Republic, and Hamburg. According to the chamber directors, Samuel and Metgen Elders were not Fredrich's only heirs. The directors claimed that Fredrich had a wife in Asia, Catrina Elders, who was the legitimate and universal heir. News brought from Asia during the case confirmed the existence of Catrina, Fredrich's "lawful wife". Samuel and Metgen, the claimants, had been silent on the issue of a spouse; the VOC framed their silence as a deliberate withholding of the truth. How was the estate to be divided between a spouse in Asia and foreign heirs making claims in the Republic?

During the legal proceedings it came to light that Samuel and Metgen Elders had received inheritance payments from the VOC in 1660, amounting to *f*782:4. The dispute arose over the VOC chamber Amsterdam's refusal to pay out or hand over the rest of Fredrich's belongings in Asia. The chamber's counter claim was that the sum paid to the siblings was too high and that the siblings received it at all was unjust in light of the existence of Catrina. Requesting confirmation of Catrina's status and then awaiting a

[83] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *778* (1686) Geextendeerde sententies, f. cxxxiii v-cxxxvii r. His function was *bootsman,* one of the positions which comprised the petty officers (*onderofficieren*) on VOC ships. Fredrich Elders cannot be found in the VOC database of employees. However, there is a record of the ship *Het Witte Peert* on which he sailed: http://vocsite.nl/schepen/detail.html?id=11998 (accessed 2015-06-13).

[84] Van Bochove and van Velzen also note that VOC employees' family members travelled to Amsterdam to collect wages, giving examples of a family from Husum, Germany and one from Calais, France. Bochove and Velzen, "Loans to salaried employees," 23 n. 10.

[85] No indication of the logistics was given in the court records. It would have been interesting to know whether or not the siblings employed help in navigating the legal system in the Republic.

response from company authorities in Asia goes some way in explaining why the case took over two decades to resolve.

The case between the Elders siblings and the VOC chamber Amsterdam followed the trajectory of suits from city to provincial level and finally to the High Court (see Figure 1, Introduction). Sometime after 1660, Samuel and Metgen Elders proceeded against the chamber directors in the Amsterdam Court (*Gerechte van Amsterdam*) where the judges (*schepenen*) passed a sentence against the Elders in 1671. Feeling aggrieved, they took the case to the Court of Holland on appeal, where once again their claim was denied. A bench of seven judges pronounced their verdict against Samuel and Metgen Elders on 1 March 1680.[86] They continued to the High Court: they were granted leave to appeal the verdict of the Court of Holland in reconvention (*reconventie*) which was sentenced in 1686. The final verdict of the High Court brought the case to an end and vindicated the Elders' persistence. The court overturned the decisions of both lower courts: the VOC had to hand over the estate left by Fredrich Elders when he died in Asia. Furthermore, the VOC's claim to be repaid the *f*782:4 was denied.

The court records from the Elders case bear no references to the company's common practice or custom, or to the earlier Boije case. These two cases may have played a role in establishing how the company dealt with inheritance questions arising from expansion. An indication that the company clarified how to deal with inheritances involving foreigners, and tying up estates left in Asia by those who died there, is the lack of similar cases in the archive of the High Court in the eighteenth century.

Wage payments and lost vessels

Whether or not wages should be paid out when company ships were wrecked was a matter considered by the High Court. In the clearest example of a collective action law suit, officers and surviving crew of the ship *Arnemuijden* sued the WIC chamber which sent them out, Chamber Zeeland, for payment of their wages. On her return voyage, the *Arnemuijden* was wrecked in the Channel as a result of enemy attack. Not only is it striking to see the officers and crew together suing their employer, the chamber, but the case documents also bring to the fore specific maritime customs and contracts which were weighed up by the courts. These point to the issue of financial liability of the officers and crew. A second case regarding shipwreck picks up on the issue of liability when a company ship was wrecked. In that case, from the late seventeenth century, it was the individual responsibility of the skipper which was under discussion after the return ship under his command was wrecked. He died in the wreck, but his mother claimed his wages from the Amsterdam Chamber of the Dutch East India Company.

[86] The seven judges who passed the sentence in 1680 were: Frederik de Liere, Cornelis Baen, Mattheus Gool, Benjamin Fagel, François Keetlaer, Paulus Andreas van der Meulen and Willem van den Kerckhoven. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *778,* f. cxxxvi r.

Jasperssen et al vs. WIC Chamber Zeeland

Samuel Jasperssen, Claes Hasebeecque and Isaac de Nan sued the Dutch West India Company chamber Zeeland themselves and as representatives of their fellow surviving officers and crew, and the widows of those who died when their vessel was attacked in the Channel.[87] Rather than each individual suing for his own part, the men made their claim together. This particular case brings together direct and indirect claims for wages. Jasperssen *et al* as employees claimed their wages from their employers, the WIC constituting what I have called a direct claim. In addition, the men stood in for their fellow officers and crew members (*Officieren ende bootgesellen*) as well as the widows and orphans of the deceased crew, thus constituting an indirect claim from both the point of view of Jasperssen *et al* as representatives and the widows and orphans claiming wages earned by someone else.

By piecing together the details provided by the opposing parties and recorded in the extended sentence, we can partially reconstruct both the events behind the case and the arguments on which each side based their claims. In 1629 the WIC chamber Zeeland (referred to as Middelburg in the legal proceedings) equipped and sent out the yacht (*jacht*) *Arnemuijden* to sail to the West Indies. Samuel Jasperssen, Claes Hasebeecque and Isaac de Nan were on board in the functions skipper, quartermaster (*bottelier*) and assistant respectively. Having fulfilled the purpose of their trans-Atlantic voyage the men sailed back to the Republic but the *Arnemuijden* was attacked in the English Channel, not far from Portsmouth (*Poortmuijden*). The men fought their Dunkirk enemies with vigour, claiming "rather to die in the line of duty than abandon their ship for the enemy's gain."[88] But the *Arnemuijden* was sunk and a number of the crew died. Jasperssen *et al* managed to get back to Zeeland where they told their sorry tale to the directors of the chamber.

Jasperssen *et al* claimed their wages from the directors of the chamber, which request was denied, although, according to the claimants, the company had no reason to reject their demand. As a result, the men pursued legal action: they sued the directors of the WIC chamber Zeeland in the city court in Middelburg. There the burgomasters and city aldermen (*schepenen*) sentenced the chamber to pay the crew their respective wages until the day the ship had sunk. The verdict was passed on 4 April 1631.[89] The WIC felt itself greatly aggrieved by the court's sentence and so proceeded to a higher jurisdiction – the High Court in The Hague. The court granted the company leave to appeal the sentence of the Middelburg court without first going to the Provincial Court, despite the fact that this went against the principle of *omisso medio*.[90] The High Court concluded the case in 1634, passing a sentence in September of that year. The High Court ruled in favour of the WIC: the sentence of the Middelburg City Court was overturned and Jasperssen *et*

[87] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *726* (1634) Geextendeerde sententie; inv. nr. *891* (1634) Register der dictims...zoals ze zijn geresolveerd.

[88] Original: "*Liever te sterven in haer devoir als het schip ten proffijte van de Vijant te abandonneren.*" NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *726* (1634) Geextendeerde sententie.

[89] Earlier in the same document the first sentence was dated 4 April 1629 which seems highly unlikely given that the *Arnemuijden* only set sail in 1629. This must be an error.

[90] LeBailly and Verhas, *Hoge Raad*, 14.

al's claim was denied, meaning that the WIC chamber Zeeland was relieved of its obligation to pay out the crew the wages they had claimed.

The extended sentence highlights the arguments each side made in support of their claims. Following the structure of the extended sentence – which always began with the perspective of the plaintiff before turning to the defendant's point of view – the WIC's argument will be outlined first. The company based their appeal on two intertwined strands, the first being the terms set out in the *artikelbrief* as a contract between employer and employees, and the second being the VOC's common practice.

From the way the *artikelbrief* was discussed in the court records it is clear that it was treated as a legally binding contract between employer and employees, in this case the WIC chamber Zeeland and the *Arnemuijden*'s crew. It was "always normal and the constant practice" to send ships out under certain "articles and conditions" specified in the *artikelbrief* which regulated the actions of the crew and established their liability.[91] Before a ship set sail, the *artikelbrief* was read aloud to the crew who could therefore not pretend ignorance of its contents. According to the *Arnemuijden*'s *artikelbrief*, the crew's wages were used as collateral against the ship, which did not belong to them. It specified that the crew risked their wages should they not return the ship, and they would have no recourse to complain to the directors of the company.[92] Thus the WIC's argument was straight forward: because the crew could not return the *Arnemuijden*, they were not entitled to their wages which had been used as collateral against the safe return of the yacht. The fact that the crew knew the terms of the *artikelbrief* was restated, creating the indubitable sense that the crew's claims were wholly preposterous.[93]

This was further reinforced by the introduction of the VOC's common practice which had gone unchallenged in court in the past. The VOC had not faced claims of the nature of the Jasperssen case, according to the WIC. In support of the WIC's argument not to pay out the wages based on the conditions of the *artikelbrief*, it was reported that the VOC followed the same kinds of conditions in sending out its fleets. And that furthermore, the VOC had never been sued over the issue of wage payments. The lack of claims against the VOC meant that Jasperssen *et al* could not point to past cases to reinforce their claims. Christiaan van Bochove and Ton van Velzen state that when a VOC ship sank, no wages would be paid, because the ship and the cargo were collateral for wage arrears.[94] However, a few years after the High Court's sentence against Jasperssen *et al*., the VOC did in fact award wages to the crew of seven ships which sank off the coast of the Cape of Good

[91] Original: "*altijt gewoon was ende in constant gebruick*", "*articulen ende conditien*". NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *726* (1634) Geextendeerde sententies.
[92] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *726* (1634) Geextendeerde sententies.
[93] In the context of this claim made against the WIC, it is interesting to note the contractual obligations set down in 1657 for the journey to be undertaken by the ship *Den Profeet Elias*, freighted by Amsterdam merchant Raphael Duarte and with *schipper* Frans Jansz Brower. It was specified that in the event of an accident – presumably extensive damage, shipwreck – in a harbour, payment of salaries would be made until the day of the accident, but if the accident took place in open sea, then payment would be made only to the date of departure from the previous harbour. SAA, NA, 1339, 1539, 92, 1657-10-04.
[94] Bochove and Velzen, "Loans to salaried employees," 25.

Hope. The officers and crew were paid until the day the ships sank. Of this episode in 1637, Jaap Bruijn comments that the award of wages was in line with maritime custom.[95]

To counter the WIC's argument, Jasperssen *et al* explained the events in the Channel in a way which effectively laid the blame for the *Arnemuijden*'s vulnerability on the WIC, in particular the company's London agent and his servant. Jasperssen *et al* claimed that they were aware of the danger posed by the many Dunkirkers sailing in the Channel. Taking into account the small size of the *Arnemuijden*, it was decided that the yacht would put in at Portsmouth. Once there the company's agent in London was notified and he sent a return message to the crew which urged them to sail on as soon as possible. To ensure their safety, he said a convoy – the *Leeuwinne* – would meet them just beyond the roadstead. The crew complied with the agent's instructions delivered by his servant. However, there was no convoy. The *Arnemuijden* was left vulnerable to attack through no fault of the crew. Furthermore, when attacked, they defended their vessel with their lives.

In the end, the High Court concluded the case in favour of the company, confirming the binding nature of the *artikelbrief* under which Jasperssen, Hasebeecque, de Nan and the others had set sail across the Atlantic. The collective legal action undertaken by the officers and crew of the *Arnemuijden* was unsuccessful in their bid to get their wages paid until the day their vessel sank. As mentioned, Bruijn indicates that the VOC did in fact follow this custom in 1637, and it was a custom which was discussed and implemented in the High Court of Admiralty in England at the time too. Steckley, whose work was discussed in the introduction to this chapter, has shown that some English sailors succeeded in claiming their wages up to the day the ship was lost despite the usual implementation of the 'last port' rule.[96] In 1634 the High Court in the Republic enforced the terms of the employment contract between the mariners and the chamber in the case of the *Arnemuijden*. The officers and crew and heirs were not paid their wages until the day the ship sank; rather, wages were withheld because according to the *artikelbrief* they were collateral against the vessel.

Neeltje Claes vs. VOC Chamber Amsterdam

Later in the seventeenth century, liability played a significant role in the arguments made by the parties in the case between Neeltje Claes and the VOC Chamber Amsterdam. Claes was the mother and heir of VOC skipper Claes Boudewijns de Vlaming and began legal proceedings against the chamber in order to receive payment of his wages after his death. Boudewijns de Vlaming had sailed to Asia on the *Silida* in 1680 and began the return voyage on board the *Tidor*. The *Tidor*, however, was wrecked on Ameland when she was supposed to be returning to Zeeland.[97]

[95] Bruijn, *Schippers van de VOC*, 148.

[96] Steckley, "Litigious Mariners," 328-329. Steckley is clear that judges sometimes implemented the rule to the benefit of mariners, but sometimes disregarded the rule for mariners' benefit too.

[97] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *791* (1699) Geextendeerde sententies; inv. nr. *907* (1699) Register der dictims...zoals ze zijn geresolveerd; inv. nr. *907* (1700) Register der dictims...zoals ze zijn geresolveerd. NL-HaNA, VOC, 1.04.02 inv. nr. 5294, f. 306. Record of the Tidore: https://www.vocsite.nl/schepen/detail.html?id=11030 (accessed 2017-04-04).

Neeltje Claes claimed her deceased son's wages from the Amsterdam Chamber which employed him. She began legal proceedings in the Provincial Court (*Hof van Holland*) rather than in a city court. According to Oscar Gelderblom, widows were one of the categories of litigants who were granted the privilege of beginning cases in higher courts.[98] The Provincial Court granted her claim. According to the sentence, the Chamber Amsterdam was ordered to pay Claes everything owed to her son by the company as well as all his belongings in the company's possession, with inventory thereof. Furthermore, she was to be given an extract from the company's books detailing his accounts. This verdict was reached by the Gentlemen and *Meesters* Mattheus Gool, Paul Andreas van der Meulen, Iman Cauw, Antonie Slocker and Fredrick Rosenboom, judges of the Provincial Court, and pronounced on 29 March 1697.[99] The Chamber Amsterdam was greatly aggrieved by this ruling and so pursued the matter in the High Court where they sought to have the sentence overturned.[100]

In making their case before the court, the chamber – represented by *procureur* Mattheus Stipel – turned Claes' claim on its head. Or at least, the chamber produced the legal argument without actually formally implementing it in their official claim (*eijsch*). Rather than the chamber compensating Claes, it was Claes who should compensate the chamber for the loss of the *Tidor* and her exceptionally valuable cargo. This was predicated on the chamber's argument that Boudewijns de Vlaming was entirely responsible for the ship wreck and subsequent loss of cargo. All Claes' statements of her son's dutiful behaviour were refuted: according to the Amsterdam chamber, Boudewijns de Vlaming sailed the wrong course, led a godless life, and was to blame for the drunkenness of the crew and lack of order on board.[101] The chamber included their lamentations "that the skipper did not leave behind an estate or heir of means" from whom they could claim the "sum of many tons of gold" worth of damages and interest that Boudewijns de Vlaming had brought upon them.[102]

Making the claim that the skipper was at fault was of course not enough – on what legal grounds did fault become liability? Interestingly, it was not the *artikelbrief* which formed the legal basis of their argument as it had in the case between the WIC chamber Zeeland and Jasperssen *et al*. The *artikelbrief* was not mentioned in the court documents relating to the case between Claes and the Amsterdam chamber. Rather, the VOC chamber Amsterdam alleged

[98] Gelderblom, *Cities of Commerce*, 127.

[99] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *791* (1699) Geextendeerde sententies scan 58 f. 56v.

[100] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *791* (1699) Geextendeerde sententies scan 58 ff. 56v, 57r.

[101] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *791* (1699) Geextendeerde sententies scan 53 ff. 51v-52r.

[102] Original: "*sij gedens hun selven moesten beklagen daer over dat de gem. schipper niet hadde nagelaten een boedel off erfgen*[*amen*] *van vermogen*"; "*een somme van veele tonnen gouds wegens schaden en interessen ten laste van de voorn*[*oemde*] *schipper hadden te vorderen*". NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *791* (1699) Geextendeerde sententies, scan 55 f. 54r.

> that according to the laws of this land it was well-known that a skipper was not only beholden to compensate all damage to ship or goods which was caused by his negligence or misdeed (crime?), but also to be punished as a criminal according to the importance (severity?) of the case.[103]

Where and when such laws had been set down was not mentioned. As has been indicated, the chamber boldly proclaimed the strength of their legal position – legal muscle-flexing, perhaps posturing – by indicating that they could make such an argument but immediately demonstrated their unwillingness to do so. Instead of enforcing the 'laws of this land' which would have brought ruin on the widowed mother of Boudewijns de Vlaming, the chamber took pity on her poverty (*onvermogentheijt*). It is worth mentioning that the case was conducted pro deo. As a result, the chamber did not pursue the line of holding the widow liable for the losses caused by her son but sought only the refusal of her claim to compensation from the company.[104]

While the VOC Chamber Amsterdam's legal posturing may have held some sway with the States General – who granted them a civil request – it was not successful as a strategy before the High Court, as was borne out in that court's sentence pronounced on 10 March 1699. The High Court upheld the sentence of the Provincial Court, judging that the chamber had not been aggrieved by the court's sentence of 1697 and consequently, as the losing party, the chamber had to pay the court fees including the cost of losing an appeal.[105] However, by 1700 the VOC Amsterdam chamber had not yet paid Neeltje Claes the *f*1708:4 which she had claimed.[106]

Credit, debt and secondary markets for wage accounts

In the cases examined so far, litigants were the wage earners themselves, as in the Jasperssen case, as well as the heirs of deceased VOC and WIC employees. The heirs included residents of the Republic and subjects of the States General as well as foreigners, such as the Elders siblings. We now turn to another set of litigants who claimed company employees' wages, the holders of wage accounts. Wages were transferable via the insourced company *maand*- and *schuldbrieven* and through notarial deeds. In addition, there were secondary markets for company servants' wage accounts. A secondary market for wage accounts was extant in the Republic, as is clear in the case of Amsterdam merchants, none of them a company employee, who sued the VOC Chamber Amsterdam for payment of wages allegedly owed to company sailors. The secondary market for wages

[103] Original: "*dat na rechten deser lande notoir was dat een schipper niet alleen schuldich was te vergoeden alle schade die door sijn versuijm off misdaed aen schip off goed wierde veroorsaeckt, maer oock om die importantie van de saeck criminelijck wierde gestraft.*" NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *791* (1699) Geextendeerde sententies, scans 55-6, ff. 54r-v.

[104] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *791* (1699) Geextendeerde sententies, scan 56 f. 54v.

[105] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *791* (1699) Geextendeerde sententies, scan 59 f. 57v; in. nr. *907* (1699) Register der dictims...zoals ze zijn geresolveerd scan 102.

[106] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02 in. nr. *907* (1700) Register der dictims...zoals ze zijn geresolveerd scan 232.

comes into sharp relief in the multifaceted case which dealt with capture, mutiny, possible desertion, and diplomacy. Secondary markets also existed in the colonies. There company servants transferred their wage credit in the Republic to others in order to generate cash in the colonies. An Amsterdam notarial deed and a complex High Court case show the workings of secondary markets in WIC and VOC ports, respectively. More than just wages, what was at stake in the VOC case which involved free migrant Cornelis Beerenberg as a litigant, was in fact subjection, and the limits of the VOC's sovereignty.

The secondary market in the Republic

That a secondary market for wage accounts of company employees existed in the Republic is not a novel idea.[107] What the case between claimants Reijnier de Wolff and Anthonij Carstens and the plaintiff, VOC Chamber Amsterdam, brings to light, is the complexity of disputes which arose out of the purchase of wage accounts, in this case specifically sailors' wages. In May 1730 two VOC Chamber Amsterdam ships, the *Purmerlust* and *Ter Horst*, set sail for Batavia. Not long into their voyage, the ships were captured by four Algerian privateers and forced to go to Algiers. Thanks to the intervention of Captain Schrijver, of the Admiralty of Amsterdam and a famous officer of his time, both ships were released to continue their journey but had to leave behind 11 valuable chests.[108] However, the crews refused to sail to Batavia. A standoff between officers and crew ensued and lasted for days before the officers gave in to the crews' demands to return to Holland. Both vessels reached Texel in September 1730. Whether the crew should be or had already been paid wages was the matter taken to the court in a collective action suit. However, it was not the sailors who sued their employer. The sailors had sold their wage accounts to a number of merchants in Amsterdam and it was those men, the holders of the wage accounts (*transporten van gagiën*), who pooled their claims against the VOC, and began legal proceedings in the Amsterdam city court.[109]

Reijnier de Wolff and Anthonij Carstens were the representatives of a group of 12 merchants, the other ten being Gerrit Closman, Jan Carstens, Pieter Meijer, Abraham Jochems, Nicolaas van Merkerk, Isaak Walles and Hermanus Heijlo, as well as Cornelis Duren, Jan Oosterman and Jan Ewald.[110] Between them, they claimed *f*21,989-14-: of wages owed to the crews of the *Purmerlust* and *Ter Horst*. The individual sums varied from van Merkerk's *f*579 to Meijer's *f*4201.[111] Jan Lucassen indicates that such men bore great risk as holders of *transporten* – if the sailor died or the ship was lost or captured the

[107] See the earlier sections of this chapter for discussion of *transportbrieven* and the secondary market for them. The important financial context is the secondary market for company shares which thrived in Amsterdam. See Petram, "The world's first stock exchange."

[108] On Schrijver see Jaap R. Bruijn, "Cornelis Schrijver," in *Vier eeuwen varen. Kapiteins, kapers, kooplieden en geleerden*, ed. L. M. Akveld, et al. (Bussum: De Boer, 1793), 161-175.

[109] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scans 2-22, ff. 1r-20v; inv. nr. *673* (1741), Resoluties, scan 5-6.

[110] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scan 2, f. 1; that they numbered 12 at the start see scans 11-12, ff. 10r-v.

[111] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scan 12 ff. 10v, 11r

creditor got little to nothing.[112] This was surely in part because "beyond their salary accounts, bearers of transport-letters did not have recourse to the person and goods of employees."[113]

The case between De Wolff, Carstens and their associates and the VOC Chamber Amsterdam directors followed the usual progression of cases from city to provincial level, and finally to the High Court. De Wolff and Carstens instituted legal proceedings against the Amsterdam chamber directors, not the wage earners, in the Amsterdam city court on 6 November 1730. They claimed payment of the wages owed them as holders of the *transporten van gagiën.*[114] Nearly two years later the Amsterdam Alderman passed a sentence: the claim was denied. For de Wolff and Carstens this outcome was "entirely unexpected".[115] From the company's point of view, the denial of the claim was fair, which opinion they reinforced by adding that three of the claimants – Cornelis Duren, Jan Oosterman and Jan Ewald – acquiesced to the court's decision.[116] At this point, Duren, Oosterman and Ewald left the group of litigants. The nine remaining claimants appealed the verdict in the Provincial Court in Holland. There they claimed to have been aggrieved by the Amsterdam sentence, sought that it be overturned or corrected, and that their original claim – now reduced to *f*16932 – be adjudicated.[117] De Wolff and Carstens, on behalf of the others, claimed that when the *Purmerlust* and *Ter Horst* returned to the Republic, the crew was dismissed and sent on their way with their goods (*plunje en kisten*) and their wages. Their wages, however, should not have been paid to anyone other than de Wolff and Carstens *et al*. The company had thus shortchanged the merchants the sum of *f*16932.[118] The Court of Holland confirmed the verdict of the Amsterdam court in the Chamber's favour. Undeterred, de Wolff and Carstens appealed to the High Court.[119]

There were three related issues which the parties disputed. Firstly, whether or not the Amsterdam chamber of the VOC should have issued passports for safe passage to the ships and the consequences thereof; secondly, what the cause of the mutiny had been; and thirdly, whether or not the crew had been paid their wages before they left the ships at Texel. The issues are difficult to separate, not least because the court record of the sentence follows the stages of the case rather than the development of each party's arguments.

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[112] Lucassen, "Zeevarenden," 134-135.
[113] Bochove and Velzen, "Loans to salaried employees," 21.
[114] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scan 12 ff. 10v.
[115] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scan 4 f. 2v.
[116] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scan 13 f. 11v.
[117] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scan 4 f. 2v-3r; scan 13 f. 11v.
[118] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies scans 3-4 ff. 1v-2v.
[119] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies scan 2 f. 1r.; scan 3 f. 1v; scan 22, f. 20v.

The *Purmerlust* and *Ter Horst* were captured during a time of peace between the Dutch and Algiers. In the previous decades, hostilities had flared up between Dutch ships (company and warships) and Algerian privateers. During the late 1600s there were a number of skirmishes between Dutch and Algerian vessels. For instance, in 1690, near the Canary Islands, skipper Gilles Brouwer fought off three Algerian pirate ships for seven hours before he could continue his journey, for which action he was rewarded with a gold chain worth 100 silver ducats (*dukaten*, *f*250). In 1696 Dirk Lovelt did not survive an encounter with two Algerian pirate ships but his widow received the amount of *f*1000 as a sign of the company's appreciation. A treaty was concluded with Algiers but repudiated in the mid-1710s. Thereafter, privateers threatened Dutch shipping as far north as the Channel. The States General responded by providing convoys and small squadrons of warships to protect the vessels. Their first success came in 1724 – Captain Schrijver captured an Algerian privateer. Two years later, in 1726 the Dutch concluded peace with Algiers. Over the following years, Captain Schrijver made a number of trips to Algiers where he was involved in ransoming the crews of Dutch ships captured and enslaved by the Algerians.[120]

It was out of this diplomatic context that the discussion of passports for safe passage arose. The claimants, De Wolff and Carstens, asserted that the reason for the 1730 capture of the *Purmerlust* and *Ter Horst* was that the two company ships were not carrying passports (*passen*). Furthermore, it was the lack of passports which caused the crew to mutiny once they had been released.[121] The chamber countered this by suggesting that de Wolff and Carstens would not know anything about when the company provided its ships with passports. The chamber claimed that it was not beholden to provide its ships with anything other than good sea letters (*goede zee brieven*) which both the *Purmerlust* and *Ter Horst* had.[122] Furthermore, the chamber claimed, the seamen were not taken on under the condition of being supplied with Turkish passports (*Turkse passen*), nor were they promised that the chamber would provide any for their journey.[123] The chamber also refuted the claim that lack of passports caused the crew to mutiny. As confirmation of this point, the chamber indicated that no-one had asked for a passport, neither before nor after the ships had been taken to Algiers. Moreover, the fact that the mutiny took place three weeks into the journey from Algiers to Batavia, the chamber claimed, meant that the seamen could not possibly still be in fear of Algerian privateers: the ships had received refreshments in Algiers and the Dutch consul there had secured Turkish passports (*complete Turkse passen*) for the ships.[124] According to the chamber, de Wolff and Carstens

[120] Jaap R. Bruijn, "Dutch men-of-war - Those onboard c. 1700-1750," in *Acta Historiae Neerlandicae: Studies on the History of the Netherlands* (The Hague: Martinus Nijhoff, 1974), 88. Bruijn, *Schippers van de VOC*, 149. Bruijn, "Cornelis Schrijver," 161-175.

[121] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies scans 5-6 ff. 3v-4v; scan 14 f. 12v.

[122] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies scans 15-16, ff. 14r-v.

[123] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies scan 16, ff. 14v-15r.

[124] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies scan 17 ff. 15v-16r.

"could not excuse the aforementioned objectionable behaviour of the aforementioned seamen with such frivolous excuses."[125] Instead, the chamber referred to ordinances, the *Placaten van den Lande*, which made provision to punish seamen and military personnel, including those taken on by the VOC and the WIC, who refused to obey the orders of their superiors.[126] This was relevant because the chamber could, they claimed, verify the rebellious actions which led to disregarding orders and threats to change their course to Holland. In addition, they claimed that it had been shown that it was the crew's fault that the ships returned to the Republic.[127]

Once the ships had returned to Texel, the chamber commissioned directors to investigate the ships' return. The commissioners found that a rumour had circulated among the crew according to which the crew would be held financially responsible for the 11 chests left in Algiers: their wages in Asia would be docked.[128] This, not the passports, was the cause of their refusal to sail to Batavia.[129] It would certainly not have been the only mutiny on VOC vessels to be sparked by financial concerns.[130] Shortly after the departure from Algiers, "the petty officers...and all the crew, both sailors and soldiers, mutinied and rebelled."[131] The petty officers and crew on both vessels refused to sail to Batavia; they demanded return to Holland.[132] In response, the skippers proclaimed "that they would rather die than go to Holland."[133] Surely hoping it would change their minds, or at least warn them of the consequences of their rebellion, the skippers read out the oath which the company employees had made, telling the "mutinous crew" that in Holland, punishment awaited.[134] The stand-off continued for days during which time the seamen handed over a round robin to the skippers, described as

[125] Original: "*zullende de Impetranten het voorschr[eeve] on-hebbelijke gedrag van het voors*[*chreeve*] *scheepsvolk geenzins met zodanige frivole voorwendzels konnen excuseren.*" NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies, scan 17, f. 16r.

[126] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies, scans 17-18, f. 16r-v.

[127] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies, scan 18, ff. 16v-17r.

[128] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies, scan 10, f. 9r.

[129] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies scan 6, f. 4v; scan 6 f. 5r; inv.nr. *673* (1741),Resolutie, scan 5-6.

[130] Ketting, *Leven, werk en rebellie*, 257. The 1608 mutiny on the *Oude Zon* was sparked by the crew's concerns over whether or not they would receive their monthly wages and loot payments while privateering in the Indian Ocean after the expiry of their contracts.

[131] Original: "*Bootsman, schieman, constapel met hunne maats Quartiermeesters, zeilmakers, timmerlieden met hare maats, also ook alle het gemeene volk zo wel matrozen als soldaten hadden gemutineert en gerebelleert.*" NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scan 6, f. 4v.

[132] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scan 6, ff. 4v-5r.

[133] Original: "*dat zij liever sterven wilden als naar Holland gaan.*" NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scan 6, f. 5r.

[134] Original: "*mutinerende volk*". NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scan 6, f. 5r; scan 7 f. 5v.

> a declaration from all the seamen, signed by them in a round circle, including that they all, nobody excepted, officers, sailors and soldiers, absolutely demanded to go to the Fatherland, to defend their business before the defendants [VOC Chamber Amsterdam] regarding the robbing of the money committed by the Turks, to whom [namely the VOC chamber Amsterdam] they [the seamen] would not pay a cent.[135]

The skippers insisted they continue towards the Cape, offering the seamen a signed guarantee that they would not be held financially responsible for the 11 chests of money they had left in Algiers. Not satisfied, the men went below deck where "in the form of a complot" they decided amongst themselves to disregard the orders of their superiors.[136] In all their actions, it seems the seamen were non-violent.[137] In spite of their refusal to work – they stated that the skipper and his helmsman (*stuurman*) could sail the vessels to the Indies themselves! – the skipper held his course.[138] On 14 July the skippers and their officers convened the ship's council where they caved to the crew's demands. The *Purmerlust* and *Ter Horst* changed course for Texel.[139]

At Texel, the crew continued in their mutinous ways, refusing to sail to Batavia. As the skipper had done before him, the commander (*commandeur*) assured the seamen that they would not be held responsible for the stolen chests; quite the opposite in fact: if they remained on board, they would be provided with brandy and tobacco by the company. The commissioners found that no more than six or seven men on board – of crews which numbered 120-180 per vessel – were willing to continue their journey; the rest refused to sail to Batavia. In mid-September the crews of both ships left the vessels, without their wages. The chamber was adamant that neither did the bookkeeper draw up wage accounts for any of them, nor did the cashier pay them out. While the company procedure was to pay out the crews, this particular crew had made itself unworthy (*zig onwaardig gemaakt*).[140] This is the only reference to withholding wages as punishment for mutiny,

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[135] Original: "*een declaratoir van het gansche scheepsvolk bij haar in een ronde circul onder tekend, behelsende dat zij alle niemand uijtezonderd, zo officieren, matrozen als soldaten, absolutelijk naar het Vaderland wilde, omme quasi hare zaken te verdedigen bij de gedaagdens* [*VOC*] *over het afneemen van het geld bij den Turk gedaan waar aan zij geen duit pretendeerden te betalen.*" NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies scan 7 f. 6r.

[136] Original: "*bij forme van complot*". NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies scan 7 f. 6r, scan 8 f. 6v.

[137] Jaap R. Bruijn and Els S. van Eyck van Heslinga, "De scheepvaart van de Oost-Indische Compagnie en het verschijnsel muiterij," in *Muijterij. Oproer en berechting op schepen van de VOC*, ed. Jaap R. Bruijn and Els S. van Eyck van Heslinga (Haarlem: De Boer Maritiem, 1980). On mutinies on board English vessels see Aaron Jaffer, *Lascars and Indian Ocean Seafaring, 1780-1860: Shipboard life, unrest and mutiny* (Woodbridge: Boydell Press, 2015).

[138] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies scan 8 f. 6v, scan 8 f. 7r.

[139] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies, scan 9, ff. 7v-8r; inv. nr. *673* (1741), Resolutie, scan 6. The *resolutie* indicates that the mutiny began on 9 July and according to the *geextendeerde sententie* the ships turned for Texel on 14 July.

[140] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies scan 11 f. 9v; 19 ff. 17v-18r.

and it is an oblique one. Unsurprisingly, the Amsterdam court's decision to refuse wages was deemed fair from the company's point of view.[141]

In the Provincial Court, de Wolff and Carstens countered the company's claims, stating that the chambers' argument that the return of the ships to Holland was the crew's fault was "futile and groundless", seeing as it was only an attempt to cover the chamber's own mistake in not providing passes.[142] They also contested the chamber's account of how the seamen ended their service. The company claimed they left of their own accord – perhaps deserted? – while de Wolff and Carstens claimed that they had been fired. This was a significant part of their claim, because according to the claimants, company servants whose contracts had been ended in this way were not only entitled to receiving their goods (*plunje*) but should also be paid their wages.[143] On the issue of wage payouts, the Amsterdam chamber stated that "in order to prevent further feared and clearly apparent dangerous repercussions," the commissioners had the crew leave the vessels at Texel.[144] It is not clear whether or not the commissioners fired the crew, or if the crew deserted.[145] In addition to the 'unworthiness' of the crew, the company raised a second justification for not paying the mariners. The directors argued that "following the custom and habit of the aforementioned company the directors paid the crew two months' wages up front" which sum was worked back while they were at sea, but the mariners earned nothing more.[146]

The Amsterdam sentence of 1732 was upheld by the 5 March 1739 verdict of the Provincial Court judges Anthoni Slicher, Petrus Moris, Johan de Mauregnault, Simon Schaep, Adriaen van der Mieden and Carel Vitriarius.[147] As the losing party, de Wolff,

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[141] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scan 12, f. 10v. The words used were "just outcome"(*regtmatigen uitslag*).

[142] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies scan 14 ff. 12v-13r.

[143] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies scan 15 f. 14v; inv. nr. *673* Resoluties scan 5-6.

[144] Original: "*om verdere gevreesde en apparente dangereuse gevolgen voor te komen.*" NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies scan 19 f. 17v.

[145] The resolutions of the States of Holland of the following year, 1731, indicate that the skippers and *stuurlieden* (navigational officers) of the two ships sought re-employment with the VOC which was granted them after consideration and input from, among others, the States of Holland. However, skipper of the *Purmerlust* Hendrik Cloek was refused a contract. *Resolutien van de Heeren Staaten van Holland en Westfriesland in haar Edele Groot Mog. Vergadering genoomen in den jaare 1731*, (1771), 737-738 (713 September 1731); 1898 (1716 November 1731). On the ranks on board Dutch ships see Lucassen, "Zeevarenden," 137.

[146] Original: "*naar gewoonte en us[a]tie van de voors*[*chreeve*] *compagnie aan het scheepsvolk hebbende betaalt op de hand twee maanden gagie."* NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies scan 5 f. 3v. This argument does not come through the court records very clearly, nor is the timing clear considering that the ships departed in May and returned in September. Perhaps the time spent in Algiers was disregarded. The matter is also addressed in the *Resolutie*: NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *673* (1741) Resolutie scans 5-6.

[147] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741) Geextendeerde sententies scan 20 f. 18v. The judges are listed in the document. I have followed the spelling of their names used in the list of Provincial Court judges available here: http://resources.huygens.knaw.nl/repertoriumambtsdragersambtenaren1428-1861/app/aanstellingen/by?aanstelling.instelling=84&aanstelling.functie=27 (accessed 2017-10-23).

Carstens and their fellow merchants had to pay the court fees.[148] Aggrieved by the second denial of their claim, de Wolff and his fellow claimants proceeded to the High Court. They received leave to appeal on 7 April 1739 where they sought an overturning or correction of the Amsterdam sentence of 1732 as well as the confirmatory sentence of 1739. Their claim included that their original claim – the payment of *f*16932 – be adjudicated and the court fees of all instances covered.[149] In the High Court, the VOC's *procureur* Pieter van Bodegem claimed that de Wolff and Carstens would be pronounced not aggrieved by the previous sentences. For the opponents, Jacob van Zanen persisted with de Wolff and Carstens's claim.[150] The High Court pronounced a verdict on 21 February 1741 by which the previous two sentences were upheld. For the third time, over the course of 12 years, de Wolff, Carstens and their associates, were denied payment of the wages they had claimed. Instead, they were fined for a groundless appeal and had to pay the court's fees.[151]

The claimants in this case, de Wolff, Carstens and their seven associates collectively sued the Amsterdam chamber for the payment of the sum of *f*16932 in sailors' wages. Not only does this case confirm the existence of the secondary market for wage accounts in the Republic, it also demonstrates that litigants could pool claims. Pursuing collective action reduced each individual's potential costs of a loss. Perhaps it was the sharing of loss which allowed the men to pursue their claims in three courts; however, we do not know for certain whether the claimants shared the costs and if they did, how they divided them between the nine men whose individual claims ranged from around *f*500 to *f*4000. This case highlights that the financial instruments for transferring wages and the existence of a secondary market combined with the federalised structure of VOC resulted in litigation between investors in wage accounts and the Amsterdam chamber of the VOC, with the sailors themselves the wage earners, remaining anonymous throughout the process.

The secondary market overseas

Records from institutions in Holland indicate that secondary markets for wage accounts also existed in the VOC and WIC charter areas. A wage account from Angola discussed in a notarial deed and a High Court case over thousands of guilders in the Zeeland chamber of the VOC would, on first reading, have little to connect them. However, the unrelated legal documents point to mechanisms of turning wage credit in the Republic into cash in the colonies. The holders of the wage accounts, not the wage earners themselves, both returned to the Republic where the wage accounts should have been paid out. It was

[148] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scan 20, f. 18v.
[149] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scans 20-21, ff. 18v-19v.
[150] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scan 21, ff. 19v-20r.
[151] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *833* (1741), Geextendeerde sententies, scan 22, f. 20v.

before the notaries and the court's bench that the colonial and metropolitan spheres collided. The right – acquired legally or illegally – to collect someone's wages at some point in the future and sometimes in a different locality created layers of contractual obligation which had the potential to make wage claims complex.

A deed reveals that when Thomas Rochfort from Limburg died, he left his wage account, that is credit, to Echmondt Schij, an Irishman in the WIC's army in Angola.[152] Once inherited, the wage account could be made liquid - Schij succeeded in turning the inherited credit into cash by selling the account to fellow WIC soldier, Henrick van Hoorn, from Nijkerk (in Gelderland, central Netherlands).[153] Unfortunately the notarial deed which relates the transaction specified neither the value of the credit, nor the amount paid for it but it was likely discounted. Taking into account the risk of buying credit, surely van Hoorn paid a lot less than the nominal value of the credit. The sale of the wage account came to light because the WIC soldiers Gotbrugh Juriaans from Tönder (likely Tønder, in southern Denmark) and Harmen Gerritsz from Freiburg (now in Germany) appeared before notary H. Schaeff on behalf of fellow WIC soldier van Hoorn. The three men had served the company together in Loanda, Angola. Juriaans and Gerritsz stated that while in Loanda they knew the Irishman Echmondt Schij very well, adding that he was a sergeant in Captain Tack's company as proof. Schij was in possession of an account (*reekening*) for wages (*gages and maandgelden*) which he had inherited from Thomas Rochfort from Limburg. Schij sold the inherited account to Juriaan's and Gerritsz's friend, Henrick van Hoorn. A note of sale was drawn up by the scribe of Captain Meppelen's company in which it was confirmed that van Hoorn had indeed paid Schij for the account and the transaction was completed. The scribe's note and the account itself were handed over to the Amsterdam notary, confirming that the account was a physical note of credit. This particular episode shows the ways in which the 'uses' of future earnings could be combined, opening opportunities for those involved in the layered transactions. Furthermore, it presents a fascinating glimpse into the lives of Dutch West India Company soldiers and the relationships they established.

An elaborate case involving a man named Cornelis Beerenberg reveals how men in VOC employ and their non-company associates went about turning credit in the Republic into cash in Batavia. Through the case between Cornelis Beerenberg and the VOC we can begin to piece together the relationship between wage accounts, liquidity abroad, private trade, and illegality. Furthermore, as a man who had never been in VOC employ, Beerenberg had interesting arguments to make about subjection and the limits of VOC sovereignty. Both aspects are explored below.

Cornelis Beerenberg and his family moved to Batavia in 1673 as free migrants. There is no indication of the family's situation at the time, but it is perhaps significant that this was only one year after the Disaster Year (*Het Ramp Jaar*). The lure of getting rich quickly in Asia drew many into company service; but unlike those company men who intended to go to Asia to make a fortune and return to the Republic to live their lives in

[152] SAA, NA, 1289, 132v, 1644-08-25.
[153] SAA, NA, 1289, 132v, 1644-08-25.

luxury, Beerenberg did not take up company employ, he took his family with him, and they departed the Republic as passengers aboard a VOC ship. Furthermore, Beerenberg's intention was to remain in Asia permanently.[154]

The case reveals nothing of their lives in the city but after almost three decades there, Beerenberg caught the attention of the Gentlemen Seventeen in the Republic. News reached them of an extensive private trading ring which involved company administrators, skippers and free men.[155] Interestingly, the Gentlemen Seventeen saw fit to summon Beerenberg to the Republic.[156] He was not alone: the Gentlemen Seventeen recalled Juriaan Beek, Aernout Plemp Fonteyn, and Hendrik Wolfraet all of whom were "burghers and free merchants in Batavia."[157] A different source included the names of Anthony Adelburg, Renier Brand, Willem Haak and Maria Schuilenburg amongst those free people summoned by the Gentlemen Seventeen.[158] They were suspected of conducting illegal trade which contravened the VOC's charter and the States General's ordinances.[159]

Legal proceedings over the alleged private trade were undertaken against Beerenberg in the Republic but it is the claim to a high-ranking VOC official's wages in the Zeeland chamber which will be examined here. Soon after his arrival in the Republic in 1703, Beerenberg went to the VOC Chamber Zeeland to claim *f*2750 of wage credit earned by the fiscal (*fiscaal*) in Batavia, Hendrik Joan Winkelman.[160] The claim was refused by the chamber directors but pursued by Beerenberg in the legal arena where he laid bare the grounds of his claim.

Beerenberg's first point was his indignation at being summoned to the Republic by the VOC. That he was a free man, never having been employed by the company, was a refrain in the suit. While he acknowledged the right of the VOC to trade, granted them by charter of the States General, he contested the company's authority over him, claiming that he was a subject of the States General and not of the company. He stated that he recognised the States General as the sovereign over the colonies. From this conception of

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[154] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *805* (1713), Geextendeerde sententies, scans 75-6, ff. 71r, 71v. The family departed from Texel on board the *Tidor*.

[155] The men involved and their functions are stated by Abraham Bogaerts. The company men included the *equipagiemeester* Otto van Thiel; fiscal in Bengal, Jan van Hengel; the skipper*s* Cornelis Keleman and Lambert van Couwenhoven, amongst others. Bogaerts discusses how the Gentlemen Seventeen found out and their contact with Batavia regarding cases there before the men were recalled to the Republic. Abraham Bogaerts, *Historische reizen door d'oostersche deelen van Asia* (Rotterdam: Jan Daniel Beman, 1731), 126-130.

[156] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scan 75, f. 71r. The Gentlemen Seventeen wrote to the High Government in Batavia on 15 March 1701 summoning the individuals to the Republic.

[157] *Nederlandsche jaerboeken inhoudende een verhael van de merkwaerdigste geschiedenissen die voorgevallen zyn binnen den omtrek der Vereenigde Provintien, sedert het begin des jaers MDCCXLVII. 20de deel.* (Amsterdam, De erven van F. Houttuyn), 368.

[158] Bogaerts, *Historische reizen*, 127-128.

[159] *Nederlandsche jaerboeken*, 368. This is based on my understanding that "Haar Hoog Mog." in the jaarboek refers to the States General. Original: "*verboden Commercie."*

[160] NL-HaNA, VOC, 1.04.02, inv. nr. *12683*, f. 3.

the limits of company sovereignty, he disputed the authority of the Gentlemen Seventeen in the Republic to summon him to the Republic against his will.[161]

Not only was he transported against his will, Beerenberg claimed that he was given insufficient time to get his affairs in order before boarding ship. To his detriment, he had to sell off his property – including his slaves – in a hurry, at a price below its worth. In addition, he did not have time to call in his debts. It was this detail which was crucial to his claim on *f*2750 in the Zeeland Chamber. The fiscal in Batavia, *meester* Hendrik Joan Winkelman was one of Beerenberg's debtors. Not having the cash to give him, Winkelman went to Notary Cornelis Wetgen who drew up a deed entitling Beerenberg to claim *f*2750 from the Zeeland chamber where Winkelman's considerable wages were accruing.[162] As the fiscal, he earned *f*150 per month.[163] According to Beerenberg, the transaction was agreed to by the then Director General, Joan van Hoorn.[164]

The company disputed Beerenberg's tale that the summons had meant he could not call in his debts and that was the reason he received Winkelman's wage accounts. The company believed that many employees were involved in illegal private trade for which activity they used their wages.[165] Specifically to prevent this, Article 35 of the *artikelbrief* forbid wages earned on the outbound voyage and during the contract period in Asia to be paid out there, unless the chamber agreed. Furthermore, other articles set out that the servant's wife, children or 'other friends' could receive his wages in the Republic and that a loan on the salary could be provided.[166] However, the company had discovered that its servants

> in an indirect manner came to possess their salaries and wages there, by means of selling the same their wages or salaries to other repatriating servants or free people for cash money and thereby conducted private and forbidden trade.[167]

For those who amassed fortunes in Asia, the company did not allow remittances to the Republic other than when a servant was repatriating and by extension, leaving company

[161] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713,) Geextendeerde sententies, scan 75, ff. 70v-71r.
[162] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scan 76, f. 71v; scan 82 f. 77v. It is specified as *carolus gulden*.
[163] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scan 79, f. 74v.
[164] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scan 76, f. 72r. Joan van Hoorn was Director General from 1701 and became Governor General in 1704.
[165] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scan 78, f. 73v.
[166] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scan 78, f. 73v.
[167] Original: "*op een indirecte wijse hunne maand gelden en gagies aldaar wisten magtig te worden, door middel van de selve hunne gagies of maant gelden aan andere repatrierende bedienden of vrij-luijden voor contant gelt te verkopen en vervolgens daar mede den particulieren en verboden handel en negotie quaamen te drijven."* NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scan 78, ff. 73v-74r.

employ. The only other exception was for the upkeep of family in the Republic. Rules governing remittances only changed in the mid-eighteenth century, at which time investigation into the legality of the fortunes also ceased.[168] The company's argument continued: according to Article 55 no-one was allowed to purchase wage accounts 'in the Indies', nor were they allowed to take purchased wage accounts to the Republic or send them to the Republic to be drawn. The punishment set out for such actions was confiscation.[169] This went further than only company employees: "greedy people outside the company's service" took part in this buying and selling of wage accounts whereby employees acquired the means to conduct illegal trade.[170] The company authorities in Batavia were clearly aware of this situation: every year, before the fleet departed for the Republic, an ordinance was published which forbade all persons to buy and sell wage accounts, or to take them as collateral for debts. Not only would those involved in the buying and selling forfeit their ownership of the sum, they would also be required to pay three times the amount as a fine (*amende*).[171]

The company made this argument in the Court of Holland between 1707 and 1711. But the proceedings did not start there. As mentioned, Beerenberg approached the chamber soon after his arrival in the Republic to request payment but, in spite of his countless polite requests, the chamber found various reasons to delay payment.[172] In November 1703 Winkelman passed away in Asia, complicating the claim by the presence of heirs. Beerenberg turned to the Middelburg court in 1705 where he sought and received a *mandament penaal* which would block the Zeeland chamber from paying out the contested sum on pains of a significant fine.[173] Beerenberg's efforts to stop the payment of Winkelman's credit to his heirs failed – the company paid the heirs, and reserved the sum of 247 flemish pounds (≈ *f*1482) for Beerenberg, less than half his original claim. The chamber had taken the matter of the estate to the Middelburg court which established the order of priority in payouts. According to Beerenberg, this happened without his knowledge. He disputed the outcome: in March 1707 Beerenberg made a claim to the full amount of *f*2750 plus four per cent interest in a case in first instance (*rau actie*) in the Provincial Council. The plaintiffs were the Gentlemen Seventeen

[168] Nierstrasz, *In the Shadow of the Company*, 84. Boxer notes that VOC and EIC employees remitted fortunes via bills of exchange using the other company which was forbidden. Boxer, *The Dutch Seaborne Empire 1600-1800*, 202.

[169] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scan 78, f. 74r.

[170] Original: "*ook andere baatsoekende personen buijten dienst van de Compagnie*". NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713) Geextendeerde sententies scan 78 f. 74r.

[171] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scans 78, 79, ff. 74r-v.

[172] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scan 76, f. 72r.

[173] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scan 81, f. 76v.

as representatives of the company, and the directors of the Zeeland chamber in particular, as members of that company.[174]

In the multi-layered lawsuits between the VOC and Cornelis Beerenberg, the company submitted an exception (*exceptie*) to the Provincial Court, that is the Court of Holland. The company claimed that the chamber could not be sued in first instance (*rauwelijx*) in the Provincial Court and that the case should be sent (*gerenvoijeerd*) to the Middelburg court.[175] This indicates a difference between suing the company and suing a chamber, at least as far as the court in which such processes could be started. Proceedings against the Gentlemen Seventeen in first instance could be heard by the Provincial Court. However, the company was not granted the exception: after much back and forth and persistence from the parties, the Provincial Court passed a sentence in 1711. The judges Johan Munster *heere* van Zanen, François Keetlaer, Charles Philips van Dorp, Fredrick Rosenboom, Cornelis Gerrit Fagel, Gillis Clement and Herbert van Beaumont denied Beerenberg his claim.[176]

Feeling aggrieved by this sentence, Beerenberg appealed to the High Court, seeking nullification or correction of the Provincial Court's sentence. He was represented by the *procureur* Paulus van Brakel, while the Chamber Zeeland's *procureur* was Mattheus Stipel.[177] Judge Simon Admiraal noted that the court did not need to consider the ordinance on private trade seeing as there was an ongoing case on the matter; nor should the court examine whether or not the sale of wages was valid; the question before the court was only whose money it was, Winkelman's or Beerenberg's. Admiraal concluded that the sum remained Winkelman's and should be part of his estate and credits and thus recommended that Beerenberg be declared not aggrieved (*niet beswaart*). Judge Verbrugge added that Beerenberg did not succeed in proving his ownership of the money by *transport* or other means.[178] Again, Beerenberg found himself on the wrong end of the verdict: his *request civile* to enter new facts, obtained from the States General on 25 June 1712 was denied; he was declared not aggrieved by the Court of Holland's sentence of 1711; and he had to pay the fine of a groundless appeal in addition to the court's fees.[179] This sentence - the unanimous decision of the High Court justices Simon Admiraal, Rutgert Verbrugge, Feltrum de Vries, Willem Sluysken, Reinier Schaep, Cornelis van Bijnkershoek,

[174] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scan 77, f. 72v; inv. nr. *665* (1713), Resolutie, scan 157.

[175] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scan 77, f. 72v; scan 83 f. 78v.

[176] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scans 83-4, ff. 79r-80r.

[177] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scan 84, f. 80r. It should be noted that Mattheus Stipel was also the *procureur* for the Amsterdam chamber of the VOC in their dispute with Neeltje Claes discussed in the earlier section of this chapter.

[178] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *665* (1713), Resoluties, scan 157. The cost of the *resolutie* was *f*60.

[179] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *805* (1713), Geextendeerde sententies, scan 85, f. 80v; inv. nr. *910* (1713), Register der dictims...zoals ze zijn geresolveerd, scan 287.

and president Hubertus Rooseboom – was resolved on 18 July 1713 and pronounced 11 days later.[180]

This was not the only claim that Beerenberg made on wages earned by company employees. Beerenberg claimed *f*12,600 plus four per cent interest earned by Emanuel Bornezee as a member of the Council of the Indies (*Raad van Indien*).[181] The claim also led to legal proceedings between Beerenberg and the directors of the company. This case was pursued on appeal to the High Court, but it was the VOC that appealed the verdict of the Provincial Council. The Provincial Council rejected the *exceptie* that the company had produced and thus the case was not forwarded (*gerenvoijeerd*) to the Middelburg court. The company's argument seems to have been that seeing as Bornezee had been employed by the Chamber Zeeland, and according to the *artikelbrief* that chamber alone should pay his wages, the matter should be heard in the Middelburg court not in the Court of Holland. The High Court overturned the Provincial Court's sentence and admitted the request to have the case heard in Middelburg. The High Court did not pronounce a verdict on whether or not Beerenberg was the legal recipient of the *f*12,600 plus interest earned by Bornezee; the High Court only ruled on whether or not to uphold the Court of Holland's sentence. This second case, which took place during the longer battle over Winkelman's wages, indicates that the VOC pursued the same strategy in both – to have the cases sent to the city court of Middelburg, where the chamber was located which employed both Bornezee and Winkelman. While Beerenberg framed his receipt of Winkelman's credit, and possibly Bornezee's too, as a way of hurriedly settling a debt, the company painted a more intricate and devious picture of well thought-out illegal transactions underpinning private trade in Asia.[182]

Just as the WIC soldier in Angola sold the wage account he had inherited, the VOC believed that its servants – including the highest level of judicial personnel, the independent fiscal – were involved in selling their wage accounts to acquire the cash they needed to take part in illegal private trade. That prohibitions were made yearly in the ordinances is an indication that the company did not succeed in quashing the trade in wages. Not only did a secondary market exist for wage accounts and company servants' debts in the Republic, these cases indicate that there was a secondary market for wage accounts in the colonies too. In the cases discussed here the two employees were on

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[180] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *665* (1713), Resolutie, scan 157; inv. nr. *910* (1713), Register der dictims...zoals ze zijn geresolveerd, scan 287. A list of High Court judges is available at http://resources.huygens.knaw.nl/repertoriumambtsdragersambtenaren1428-1861/app/aanstellingen/by?aanstelling.instelling=117&aanstelling.functie=27 (accessed 2017-10-23). On Roosenboom: http://resources.huygens.knaw.nl/repertoriumambtsdragersambtenaren1428-1861/app/aanstellingen/by?aanstelling.instelling=117&aanstelling.functie=64 (accessed 2017-10-23).

[181] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *664* (1707), Resolutie, scan 96. Bornezee was employed by the Zeeland chamber of the VOC. He sailed to Asia in 1654 and reached the highest point of his career in 1691 when he accepted the position of Councillor of the Indies. Jan Parmentier and Ruurdje Laarhoven, eds., *De avonturen van een VOC-soldaat. Het dagboek van Carolus van der Haeghe 1699-1705* (Zutphen: Walburg Pers, 2009), 17-18.

[182] In December 1717 there was a case sentenced by the High Court between Nicolaas Amerongen and Constanteijn Beerenberg who was the son of Cornelis Beerenberg. Bornezee allegedly owed Beerenberg *f*19129 which he had promised to repay in the Republic, secured by his wages in the Zeeland chamber. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv.nr. *666* (1717), Resoluties, scan 164.

opposite ends of the companies' hierarchies – a WIC soldier and a VOC fiscal. Employees of both companies found means of turning their credit in the Republic into cash in the colonies.

Beyond the disputed wages, the case involving Beerenberg highlights the fact that the way that the VOC went about clamping down on illegal private trade rings in Batavia – namely by summoning an inhabitant of Batavia to the Republic – brought out arguments over the limits of the VOC's sovereignty. The charter which the company received from the States General delegated sovereignty to the company from the Cape of Good Hope across the Indian Ocean, however the exercise of that sovereignty was disputed. Beerenberg employed an argument about subjection to dispute his summons to the Republic – he claimed that he was a subject of the States General, not of the company, and therefore objected to the Gentlemen Seventeen's order for his forced transportation from Batavia to the Republic.

Amsterdam Auctioneers vs. VOC Chamber Amsterdam

The final case to be examined in this chapter did not involve company employees nor holders of their wage accounts. Instead, the case was fought out between the Amsterdam city auctioneers and the VOC Chamber Amsterdam over the remuneration the auctioneers received for their assistance at that chamber's auctions. VOC auctions were held twice yearly, in the European autumn and spring.[183] While auctions have become synonymous with how colonial goods were sold in the Republic, the VOC did not in fact have in-house auctioneers, as appears from the case. Each chamber had the independence to hold its own auctions, and in Amsterdam this was done in cooperation with the city authorities, and more specifically, with the city auctioneers. The chamber paid the city auctioneers a salary for selling off the company return goods. On a number of occasions, the directors of the Amsterdam chamber and the auctioneers came into conflict over remuneration – the auctioneers complained that they were not paid enough – and the terms were renegotiated. During the 1740s, a period during which the VOC was increasingly carrying private traders' goods in return for a freight fee, known as the recognition trade, a dispute between the parties escalated to the point where they agreed to put the matter before the bench of the High Court.

"From of old", the court sentence reads, "the claimants [auctioneers and secretaries of Amsterdam] and the defendants [directors of the VOC chamber Amsterdam] could not agree on the rights due to the claimants for their assistance and service at the sale of company goods."[184] Municipal authorities played an important role in managing the conflict over the course of a century. In 1638 the burgomaster of Amsterdam first settled the matter (*schikking gemaakt*): for their assistance, the company would pay the

[183] Karwan Fatah-Black and Mike de Windt, "De architecten van de Republiek? De opkopers van VOC-veilingen in Zeeland in de achttiende eeuw," *Tijdschrift voor Geschiedenis* (under peer review 2017): 7.

[184] Original: "*De Eiss[che]r en Verw[eerde]r van oude tijden af, elkander niet hebbende konnen verstaan over 't regt de Eiss[che]r competeerende, weegens haar assistentie en dienst bij verkoping der goederen van de compagnie.*" NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *675* (1749), Resoluties, scan 120; inv. nr. *919* (1749), Register der dictims...zoals ze zijn geresolveerd, scan 146.

auctioneers three per cent "of the auctions", indicating the proceeds from the sale by auction of company return goods.[185] This situation lasted until 1657 when the burgomasters replaced the percentage commission with a yearly payment of *f*1,000.[186] By 1665 there was again discord over remuneration: the burgomaster of Amsterdam increased the auctioneers' and secretaries' pay by the addition of the yearly portion of spices to which a director was entitled. But the burgomaster denied the auctioneers their claims to remuneration from the sale of porcelain brought back to the Republic by the company. The auctioneers and secretaries declared that they were satisfied with the burgomaster's regulation.[187] The company paid the auctioneers and secretaries their yearly fee and portion of spices without the reocurrence of disputes until 1745, at which time the city auctioneers refused to sell VOC recognition trade goods under the existing salary arrangement. Where the parties did see eye to eye, was the need for their dispute to be resolved by the court, specifically the High Court.[188]

In the High Court, the auctioneers and secretaries of the city of Amsterdam claimed that they should be remunerated one per cent of the sales value of tea and porcelain that was transported by the company from Batavia to the Republic, plus four per cent interest. The VOC's counter claim was two pronged. Firstly, the chamber directors claimed that "they would not be subject to municipal statutes".[189] This should perhaps be interpreted in view of the VOC's relationship with the States General, the body from which it received its charter. Perhaps the implication of the statement was that the chamber Amsterdam considered itself above the authority of the Amsterdam city government and subject only to the States General's regulations. However, that the company had submitted itself to the burgomaster's settlements during the seventeenth century, severely weakened this argument. The auctioneers raised the objection that their agreement with the company did not cover the goods that were brought back as part of the recognition trade, goods which they differentiated from company goods based on ownership. Goods brought back against payment of freight they claimed, were still owned by the private merchants who made the agreements with the VOC. The opposing view was of course that the company did own the goods, because the VOC purchased them from the private merchants. This was countered with the detailed knowledge of how the company sold the goods: evidence of the distinction between goods was in the fact that the company sold them separately, recognition goods were sold "with the designation that they were brought back at freight and that would not happen if the company had ownership of the tea".[190] Part of this

[185] Original: "*van de venduen.*" NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *675* (1749), Resoluties, scan 120. The sentence is not explicit about whether this was the outcome of legal proceedings or not.

[186] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *675* (1749), Resoluties, scan 120.

[187] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *675* (1749), Resoluties, scan 120.

[188] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *675* (1749), Resoluties, scan 120. This is stated in the court's resolution but the basis of the agreement between them ("o*nderling verdrag"*) was not explained in that document.

[189] Original: "*dat sij geene steedelijke keuren subject souden sijn*." NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *675* (1749), Resoluties, scan 121.

[190] Original: "*de compagnie verkoopt de selve apart met designatie dat se op vragt sijn meedegebragt.sij doet daar van reekening, en dat souw niet geschieden indien de comp eijgendom van de thee had*." NL-HaNA, Hoge

counter argument was that the tea remained the property of the private merchants until it arrived in the Republic because the VOC did not want to carry the risk (of loss or damage) at sea. Whether or not the tea and porcelain brought back from China belonged to the VOC or to private merchants was one part of the dispute between the parties. But the VOC also objected to the one per cent of sales claim on the grounds that it was an enormous sum in actual terms, for the sales from 1745. Claiming one per cent amounted to the sum of *f*23,000 which was "exorbitant and unreasonable" in light of the previous remuneration package of *f*1,000 plus spices with which the auctioneers had previously been satisfied.[191] This is an indication of the enormity of the recognition trade in tea and porcelain in 1745.[192] Furthermore, the company complained that the auctioneers claimed one per cent of the sales value without first subtracting the forty per cent fee payable to the VOC for freight.[193]

The bench, consisting of the judges Willem Hendrik Dierkens, Hendrik Mollerus, Willem Pauw, Johan van Nispen, Adriaan van den Santheuvel, Abraham van Ruster and the president Hendrik van Hees, was unanimous in its verdict that the auctioneers' claim be denied.[194] One of the judges' reasoning is particularly interesting to delve into. Dr Abraham van Ruster raised the distinction between the letter and intent of the salary agreement (*conventie*), the same issue that was raised in the case between Jan Schull and the VOC Chamber Amsterdam but in that case with regards to the prohibitions on private trade.[195] He stated that "one should not reflect on the letter but on the intention of the agreement" adding that if at odds, it was the intention that should prevail.[196] This was relevant to his reasoning because at the time the salary agreement was made, in 1665, the VOC did not conduct recognition trade, and could not possibly have thought of it. He notes that the recognition trade was introduced in 1741.[197] It was the changing structure of company trade in the 1740s, specifically the introduction of the recognition trade in tea and porcelain, which led to the dispute between the company and the chamber over the remuneration which was due to the auctioneers. Unlike at various other moments of conflict, in the seventeenth century, the remuneration dispute was not settled by the

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Raad Holland en Zeeland, 3.03.02, inv. nr. *675* (1749), Resoluties, scan 121. It is noted that the company charged forty percent freight.

[191] Original: "*exorbitant en onbillijk*." NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *675* (1749), Resoluties, scan 121.

[192] Chris Nierstrasz has shown that 1730 marked the end of monopolistic pursuits of the tea trade and opening of a competitive period by both the VOC and the EIC. Nierstrasz, *Rivalry for Trade*, 61-66.

[193] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *675* (1749), Resoluties, scan 121.

[194] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *675* (1749), Resoluties, scans 121-2. High Court judges listed here: http://resources.huygens.knaw.nl/repertoriumambtsdragersambtenaren1428-1861/app/aanstellingen/by?aanstelling.instelling=117&aanstelling.functie=27 (accessed 2017-10-23). Hendrik van Hees: http://resources.huygens.knaw.nl/repertoriumambtsdragersambtenaren1428-1861/app/personen/4836, (accessed 2017-07-31)

[195] See Chapter 3. On van Ruster see: http://resources.huygens.knaw.nl/repertoriumambtsdragersambtenaren1428-1861/app/personen/8540 (accessed 2017-07-31).

[196] Original: "*men moet niet op de letter maar op de intentie van de conventie reflecteeren*." NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *675* (1749), Resoluties, scan 122.

[197] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *675* (1749), Resoluties, scan 122.

Amsterdam burgomaster, but the parties agreed to take the matter to the High Court. There the judges considered whether or not the change in the structure of the trade, and the concomitant increase in volume of goods to be auctioned which was implied, necessitated a resetting of the payment arrangement between the company and the auctioneers. Part of this included considering the argument made by the auctioneers that recognition goods did not belong to the company, and that these goods did not fall under the 1665 agreement. The judges tended to agree that the goods were not company goods, but that the intention behind the agreement which predated the recognition trade had to be upheld. The Amsterdam auctioneers were to sell the goods brought over by the company. The High Court concluded that the auctioneers were not entitled to the one per cent of sales which they had claimed, which decision was pronounced on 31 July 1749.[198]

Conclusion

The Dutch East and West India Companies faced litigation in the High Court over payment of company servants' wages. Neither company successfully managed this employer-employee conflict internally. Cases against the directors of the company chambers, as the employers, were pursued in the courts from city to provincial level, and finally to the High Court. This constitutes another 'type' of dispute which was resolved in the High Court, along with those pertaining to the companies' monopolies (Chapter 2), illegal private trade (Chapter 3), shares (Chapter 5) and property rights principally over colonial goods (Chapter 6).

Wage cases were heard in the courts in the Republic as a result of the payment structure of the companies. The VOC, for which company more detailed knowledge is available about the level and payment of wages, kept records of employees' salaries which accrued in the chambers in the Republic. The majority of the wages earned were payable only at the end of the employee's contract, when he returned to the Republic. Because recruiting, employing and paying company servants was devolved to chamber level, the cases heard in the High Court involved the chamber directors as litigants, rather than the Gentlemen Seventeen, or in the case of the WIC, the Gentlemen Nineteen/Ten.

The litigants who opposed the chamber directors in court encompassed a far wider pool of people than just the wage earners themselves. I argued that this was the result of the transferability of company servants' wages. The transferability of wages meant that they could enter relationships of credit and debt based on their future earnings, which included but were not limited to providing for their families while they were abroad. While the VOC insourced these transfers, WIC employees could do the exact same things via notarial deeds. VOC employees had the opportunity to draw part of their salaries while in Asia, however, the larger share accrued to them in the Republic, to be claimed upon their return, or by heirs and creditors after they had died. In the context of wage litigation, transferability had the effect of widening the pool of litigants to include kin, heirs and

[198] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *919* (1749), Register der dictims...zoals ze zijn geresolveerd, scan 146.

creditors. Claims made by the employees themselves, which I have called direct claims, were evident in the Jasperssen case against the WIC, but even then, the crew's claims were combined with those of the heirs of their fellow mariners, namely indirect claims resulting from the transferability of wages.

The wide pool of litigants in wage cases encompassed foreigners. Their presence in the High Court immediately indicates the accessibility of that institution. How they navigated the legal system – through a broker or representative – is unclear. But that foreigners had legal claims on the wages earned by VOC employees in the first place was a result of the international nature of the labour market from which company servants were recruited. Considering the high proportion of Germans in VOC employ, it is not surprising to encounter their families making inheritance-based claims. The VOC had practices in place which favoured locals over foreigners in the order of payments.

Parties to cases were made up of multiple individuals who together brought a claim, that is, there was collective action against both companies' chambers. The groups of litigants consisted of two or more heirs who together sued for their inheritance; the surviving crew of the *Arnemuijden*, representing themselves as well as the heirs of their deceased fellow seafarers, sued for their wages after their ship was lost; and a group of *transporthouders* pooled their claims to the wages earned by mariners on board two VOC ships. Collective action allowed litigants to share the costs of legal proceedings which were usually for the losing party's bill. As Steckley has shown for the High Court of Admiralty in London, collective action reduced the potential cost of legal proceedings relative to the claim.

Over time wage disputes with the companies changed in nature. During the seventeenth century, particularly in the first few decades after the creation of the VOC, the Amsterdam and Zeeland chambers faced inheritance cases in which the courts in the Republic had to adjudicate claims in the context of a mobile workforce made up partly of immigrants. Information about heirs had to requested from overseas causing delays; estates consisted of goods overseas as well as in the Republic; and heirs too resided in the Republic, other parts of Europe and in Asia. Furthermore, innovation was required to deal with new legal problems which arose from tying up estates across oceans. Inheritance cases from the eighteenth century seem to be of a different type – heirs disputed the punitive confiscation of wages which the company imposed on servants suspected of illegal private trade. These cases involved vast sums allegedly owed to heirs of high-ranking company officials.[199] When seen alongside other inheritance cases the clustering needs to be pointed out. It is possible that the inheritance cases which were sentenced during the seventeenth century established a degree of predictability in sentencing which mitigated the need to pursue legal proceedings in later years.

Turning to the WIC, the outsourcing of the WIC monopoly to private individuals had an effect on the kinds of cases it faced in court. As has been seen, contractual disputes

[199] See for instance the inheritance-related cases involving the Pit heirs, Valkenier heirs, and Phoonsen: NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *664* (1706), Resolutie, scan 18; inv. nr. *666* (1714), Resolutie, scan 32; inv. nr. *667* (1762), Resolutie, scans 236-7, inv. nr. *922* (1762), Register der dictums...geresolveerd, scan 39.

in the High Court were a WIC phenomenon (Chapter 2). That private merchants could conduct trade with their own ships in the charter area likely resulted in a smaller incidence of crews and officers claiming their wages – instead of suing a WIC chamber, they would sue the ship owners or the captain depending on their terms of employment. This is exactly what is seen so frequently in the High Court of Admiralty. Because the VOC owned its ships to ply the Cape route, wage disputes would not have involved crew versus captain or ship owner but rather crew and officers versus the chamber that employed them. Thus the structure of trade is a likely explanation for why there were so few WIC wage cases in the High Court. A similar pattern emerges in the following chapter, which deals with cases of disputed share transfers. There we again see a predominance of VOC cases in the High Court.

5. Shares of empire

The VOC's problem of conflicts over share ownership

One of the ways in which the Dutch East and West India Companies raised capital for their operations was by selling shares to the public.[1] Residents of the Dutch Republic and foreigners could invest their money in the chambers of the company and they did at a rapid rate when VOC subscriptions opened in 1602.[2] Investors, large and small, pledged their money in the hopes of spectacular returns. The Amsterdam Chamber attracted investments that ranged from a servant's *f*50 to Isaac Le Maire's *f*85,000, the single largest investment across all chambers.[3] From the outset, company shares were transferable, and very quickly a secondary market was underway for each chamber's shares.[4] At this time, Amsterdam was the economic heart of the Republic, and beyond. The city had risen to prominence, having overtaken Antwerp as a centre of world trade.[5]

The VOC has been hailed as the first joint-stock company, the first multinational, and the forerunner of today's limited liability company (*naamloze vennootschap*).[6] It was a catalyst of financial and corporate innovation in Amsterdam and the Republic more generally. The transferability of shares and the contract enforcement mechanisms which underpinned share transfers were central to these developments. Shareholders used the courts in Holland to manage disputes over share ownership and transfer. These conflicts encompassed disputes between shareholders themselves, and between shareholders and the issuers of those shares, the company chambers. Lodewijk Petram's research on the former type of dispute has shown how shareholders used the courts and the impact of the sentences. In the first three decades of the seventeenth century, Petram argues, shareholders used the courts of Holland – the Amsterdam court and the Court of Holland for appeals – to test the limits of the legal framework and determine the legal principles which underwrote the secondary market. The sentences passed by the Holland courts provided sufficient clarity and predictability on how the courts would deal with contract enforcement cases so that after the 1630s share traders no longer turned to the court to

[1] They also received subsidies – the WIC in particular was supported financially by the States General – and raised funds through the sale of return goods in the Republic, and issuing bonds. On VOC financing see Gaastra, *The Dutch East India Company*, 26-29. On the WIC's financial support from the States General see Bick, "Governing the Free Sea," 100; Heijer, *De geoctrooieerde compagnie*, 61-62. The sale of return goods is addressed in Chapter 6.

[2] Petram, "The world's first stock exchange," 2, 17-20.

[3] Dillen, *Aandeelhoudersregister*, 36.

[4] Petram, "The world's first stock exchange," 2.

[5] Gelderblom, *Cities of Commerce*, 1. See also Jonathan I. Israel, *Dutch Primacy in World Trade, 1585-1740* (Oxford: Clarendon Press, 1989).

[6] Dari-Mattiacci et al., "Corporate Form."; Heijer, *De geoctrooieerde compagnie*; Ella Gepken-Jager, Gerard van Solinge, and Levinus Timmerman, eds., *VOC 1602-2002: 400 years of company law* (Deventer: Kluwer Legal Publishers, 2005).

resolve share-related conflicts.[7] But what of the second type of dispute, those between shareholders and the chambers which issued shares?

The chambers of the VOC faced litigation in the High Court over share ownership. In the federalised structure of the company, shareholding was one of the many elements of company corporate governance that was devolved to the level of the chamber. Rather than issuing shares in the company as a whole, each of the six chambers of the VOC raised capital through the sale of shares in the primary market, in 1602; each chamber kept its own records of shareholders in its books; and secondary markets grew up for shares in each of the chambers. It is this devolution which explains why it was the chamber directors of specific chambers who were summoned to court in cases of disputed ownership, instead of the Gentlemen Seventeen. Like wage litigation, disputed ownership of shares was a matter pursued against chamber directors. The Chambers which were summoned to court in the cases which are examined here were Amsterdam, Zeeland and the somewhat peripheral chamber Hoorn.

There has been much debate about the factors that facilitated and caused the flourishing of Amsterdam in the early seventeenth century. In particular, historians debate the role of immigrants from the Southern Netherlands, like Isaac Le Maire, in the development of Amsterdam into a commercial hub, and concomitantly, in financing the VOC. Historians have argued for and against the importance of immigrants from Antwerp who relocated to Amsterdam after Antwerp fell to the Spanish (1585). While some scholars have argued that the immigrants brought crucial capital, knowledge and commercial networks with them, others have argued that they were not the deciding factor in Amsterdam's rise to prominence.[8] Oscar Gelderblom shows that immigration had been underway before 1585, that the immigrants were not a merchant elite, and that the young men who moved to Amsterdam did so when their careers in international trade were in their infancy. He thus puts the role of Southern Netherlanders in new light. According to Gelderblom, investments by Southern Netherlanders were dominated by five men who invested vast amounts in the Amsterdam chamber. Five men – Isaac Le Maire, Caspar Quinget, Jacques de Velaer, Pieter Lintgens and Jan Jans Carel – invested more than *f*30,000 each, which sums were unmatched by other merchants.[9] While immigrant merchants played a role in financing the company, what role did foreign investors play? Scholars have generally found that the role of foreign investment in the VOC was limited. When the WIC was searching for investors, efforts were made specifically to court foreign investors. This was done through advertising beyond the Republic.[10]

Thus far, I have made no mention of WIC chambers summoned to court over share ownership. What is striking is that court cases in the High Court between shareholders and chambers were a specifically VOC problem. WIC Chambers did not face similar cases:

[7] Petram, "The world's first stock exchange," Ch 3.
[8] Gelderblom summarises the debate in Oscar Gelderblom, *Zuid-Nederlandse kooplieden en de opkomst van de Amsterdamse stapelmarkt (1578-1630)* (Hilversum: Verloren, 2000), 15-22.
[9] Ibid., 158, 242-159.
[10] Heijer, *De geoctrooieerde compagnie*, 62, 78; Dillen, *Aandeelhoudersregister*, 43.

the High Court records do not include cases of share-related conflicts between the WIC Chambers and their shareholders. What can explain the lack of WIC cases? Some twenty years after the VOC was established, when WIC subscriptions opened, they did not prove as popular as VOC shares had done. For two years, the WIC struggled to attract the necessary capital investment to begin its operations.[11] One possible explanation is that the unpopularity of WIC shares persisted, and produced less dynamic secondary markets around the chambers. Investors' reluctance to commit their capital to the WIC will be discussed later in this chapter. While the companies' shares differed in popularity, they did not differ as financial instruments. Like VOC shares, WIC shares had the same important quality of being transferable on secondary markets.[12] Shareholding in the WIC worked in the same way as the VOC, thus differences between shares cannot explain the lack of WIC cases. The difference may be found in the interests of the investors. Lodewijk Petram has argued that VOC shareholding was initially seen as an opportunity to profit from a specific branch of trade, but before the mid-seventeenth century owning VOC shares had become more about trading the financial instruments themselves rather than the long-distance trade which underpinned their value. It is likely that WIC shares did not undergo this shift.[13]

The cases which are analysed in the rest of this chapter were brought against VOC Chambers and were heard in the courts in the Republic. Interestingly, none of the cases follows the pattern set out in Figure 1 (Introduction) – that is the progression from city court, to the Court of Holland, and finally to the High Court. In part at least, this can be explained by the standing of the litigants, and by the court's competence.

The cases which were brought against chamber directors arose out of four circumstances, namely debt, bankruptcy, sale of shares, and inheritance. In some cases these circumstances were intertwined. After establishing the way shareholding in both the VOC and the WIC worked and the position of the shareholders in the VOC in the first section, I will turn to analysing the court cases. In section two I analyse three disputes against VOC chambers, showing how the conflicts made their way to the High Court, and what they reveal about the relationship between the company and its shareholders. The Bartolotti family's long-running dispute with the VOC Chamber Hoorn is the topic of the third section. By piecing together the family's connections, revealed in the legal dispute and other sources, I will present a portrait of a well-connected, wealthy, Amsterdam merchant family, who invested in both the VOC and the WIC, amongst other branches of trade. The family's dispute with the VOC reveals much about the investments made by a foreigner in the first company account in 1602, and the strategies used to conceal foreign investment. It was these strategies which made the claim to the shares so difficult to prove for the Bartolottis. The claim was further complicated by the bankruptcy of one of the men involved. That the case was against the Hoorn Chamber provides a view of investment in a chamber which is generally considered peripheral. In this way, detailed analysis of the case adds another dimension to the research on shareholding and ownership which has

[11] Heijer, *De geschiedenis van de WIC*, 33.
[12] Petram, "The world's first stock exchange," 7.
[13] Ibid., 36.

so far focussed on Amsterdam as the financial heart of the Republic. What motivated the merchant-banker Bartolotti family to pursue a case over ownership of shares in that chamber? Other than the significant financial value, the potential influence over that chamber that such a large parcel of shares represented is a possible explanation for their persistence in suing the Chamber Hoorn.

Taken together, the cases over ownership point to the ways in which the VOC tried to manage its relationship with shareholders. They reveal company policy regarding debts and purchases of spices; the problems which arose out of not issuing share papers; the complications of conditions attached to shares; and shareholders' investment strategies. This chapter brings chambers other than Amsterdam into the spotlight, casting much needed light onto share transactions outside of the economic centre. Furthermore, foreigners and families with immigrant roots feature in three of the four cases which are analysed in this chapter. Their dealings with the company chambers outside Amsterdam add another detailed layer to the research which has already been conducted on foreign investment and the role of Southern Netherlanders in that city.

Shareholding in the VOC and WIC

When subscriptions in the VOC opened in 1602 they proved immensely popular. Thousands of investors chose to place their capital in the chambers of the company. The Amsterdam chamber records have been best preserved. They show that 1,143 investors together raised *f*3,679,915.[14] As mentioned in the introduciton to this chapter, investments covered the whole spectrum from small to spectacular sums.[15] At that point the denomination of a single share was not set; by the 1630s, it was customary to trade *f*3,000 and multiples thereof as a single unit on the Amsterdam market.[16]

Le Maire was one of the men of Southern Netherlands origin to invest in the company. In addition to the men who moved to Amsterdam and invested in the company, there were Southern Netherlanders who remained resident in those lands, which were enemy territory, who invested in the Amsterdam chamber. They did so in secret for fear that they too would be sentenced to death if their participation came to light, which fate, it was rumoured, had fallen on an investor in Antwerp. A very limited number of foreigners from German cities such as Hamburg and Emden, and an Italian invested too. The Amsterdam chamber also attracted investment from Northern Netherlanders resident outside the Republic.[17] Subscriptions in that chamber far outstripped those in the other chambers, but nevertheless, when the subscription drive closed, six semi-

[14] Heijer, *De geoctrooieerde compagnie*, 61.
[15] Dillen, *Aandeelhoudersregister*, 36. Henk den Heijer categorised the Amsterdam chamber investments: small shareholders including bakers, basket makers and female domestic servants among others; medium shareholders including merchants, clergymen and some nobility; and finally chief shareholders who invested more than *f*10,000. Henk den Heijer, *De VOC en de beurs. De Verenigde Oost-Indische Compagnie als grondlegger van de eerste aandelenbeurs/ The VOC and the Exchange: How the VOC laid the foundations for the world's first stock exchange*, trans. Vicky Trees (Amsterdam: Aksant, 2002), 22-25.
[16] Petram, "The world's first stock exchange," 19, 39.
[17] Dillen, *Aandeelhoudersregister*, 42-43.

independent capital stocks had been established to fund the operations of the newly chartered company.[18]

The 1602 charter set out the regulations for the management of each of the chambers. Each chamber was run by a group of directors, together numbering 76 at the outset. These were the men who had been involved in the early companies (*voorcompagnieën*). As men vacated their seats, they were not all replaced, so that the number of directors across the chambers was reduced to 60. When vacant positions had to be filled, it was the responsibility of fellow directors to nominate three "competent, qualified persons" from which list the provincial states chose the new director.[19] The directors were required to be shareholders: directors in the Amsterdam, Zeeland, Delft and Rotterdam chambers had to commit *f*6,000 of their own to the chamber, while *f*3,000 sufficed for directors in the Hoorn and Enkhuizen chambers.[20] Table 1 shows the division of directors between the chambers.

The governing body of the company as a whole was constituted by a number of the chamber directors who together formed the Gentlemen Seventeen. Each chamber sent a set number of directors to sit on that board, as Table 1 shows. The seventeenth board member was provided by each of the chambers on a rotation basis, excluding Amsterdam.[21] The result was that Amsterdam directors could not outvote the other five chambers.

Table 1: Chamber directors and the Gentlemen Seventeen

Chamber	Number of directors	Number of directors in Gentlemen XVII
Amsterdam	20	8
Zeeland	12	4
Delft	7	1
Rotterdam	7	1
Hoorn	7	1
Enkhuizen	7	1

plus 1 on rotation basis

Source: 1602 charter Articles 2 and 25 in Witteveen, *Een onderneming*, 87, 91.

In 1623, in the wake of much shareholder discontent which accompanied the first charter renewal (see next section), the category of major shareholder (*hoofdparticipant*)

[18] Petram, "The world's first stock exchange," 7-8.

[19] Original: "*bequame, gequalificeerde persoonen*" 1602 Charter Article 26 in Witteveen, *Een onderneming*, 92. Clearly, chambers were not all strict adherents to these regulations. Gaastra discusses the tensions which arose between chambers over diverging nomination practices, and delegation of the choice to bodies other than the provincial states. Gaastra, *Bewind en beleid*, 27-29.

[20] 1602 Charter Article 28 in Witteveen, *Een onderneming*, 92. Charter Articles 18-23 named the founding directors of each chamber, 24 stated that vacancies would not be filled until the numbers set out in Article 25 had been reached. Article 26 set out the process for filling vacancies.

[21] 1602 charter Article 2 in ibid., 87.

was introduced. Investors who had put in at least as much capital as required for directors qualified as major shareholders.[22]

Among the investors in the VOC were people who were resident in the Dutch Republic, as well as non-residents. There were 'locals' and 'foreigners' in both categories. The VOC charter stated that inhabitants of the Dutch Republic could invest any amount they wished in the VOC. Clearly optimistic about forthcoming capital commitments, it was decided that should investment exceed the amount necessary for the creation of the Company, 'foreigners' (*uytheemsche*) would have to limit their contributions first, and then 'locals' (*inheemsche*) would be required to decrease their investments to *f*30,000 each.[23] Theoretically, this limited investment in the VOC to those resident in the Republic – whether local or foreign. However, there is evidence that individuals resident outside the Republic also invested in the company, via family members or agents. The shareholders' register for the Chamber Amsterdam includes a short list of investors from (or residing) outside the Dutch Republic: a few Germans; Southern Netherlanders living in Hamburg and Emden amongst other prominent trading cities; a Venetian; and a Northern Netherlander residing outside the Republic.[24] Similarly, foreigners invested in the Chamber Zeeland, notably English merchants, at least four of whom were from London.[25] Thomas Laleij, discussed later in this chapter, may well have been one of the four mentioned by Henk den Heijer. Based on the surviving registers of shareholders, scholars have concluded that 'foreign' investment in the chambers Amsterdam and Zeeland was minimal.[26] This conclusion is based on analysis of the names in the capital books. However, for some investors attaching their name to their financial contribution to Northern Netherlands navigation was too risky. It was strictly forbidden for merchants in the Southern Netherlands to invest in the Republic, the Northern and Southern Low Countries being at war, in the Dutch Revolt. As Henk den Heijer notes, if individuals from the Southern Netherlands did indeed invest in the VOC in secret – through family members or agents – the 'foreign' capital invested in the company would be higher than is currently believed.[27] Foreigners investing in the VOC is taken up in the analyses of the court cases, where a number of foreigners come to the fore in conflicts with the company over shares.

In contrast to the VOC, when the WIC was chartered in 1621 investors were slow to commit their capital to the new company. Lodewijk Petram and Matthijs de Jongh attribute this to the fallout from VOC investors' dissatisfaction with their position in that company. In addition, investors were wary of government influence over the working of

[22] Gaastra, *Bewind en beleid*, 26. Matthijs de Jongh points out that the designation *hoofdparticipant* had been used as early as the Zeeland *voorcompagnie* and by Willem Usselincx in his 1604 proposal for a West India Company. It was only introduced to the VOC officially in 1623. Jongh, "Tussen *societas* en *universitas*," 103.
[23] VOC Charter Article 10 and *Secrete Resolutie* published in Witteveen, *Een onderneming*, 88-89, 98. It never happened that there was oversubscription therefore foreigners were allowed to invest in the VOC. Heijer, *De geoctrooieerde compagnie*, 77.
[24] Dillen, *Aandeelhoudersregister*, 42-43.
[25] Den Heijer notes that they were most likely part of the Merchant Adventurers. Heijer, *De geoctrooieerde compagnie*, 78.
[26] Ibid. See also Dillen, *Aandeelhoudersregister*, 43.
[27] Heijer, *De geoctrooieerde compagnie*, 78.

the WIC.[28] It took two years and alterations to the company monopoly before sufficient capital was committed to the five chambers for the company to begin exploiting the monopolies it had been granted over the Atlantic and Pacific Oceans. The WIC struggled to get together its starting capital of *f*7,108,161.[29]

The WIC was structured along similar lines to the VOC, reflecting the federalised structure of that company and the Dutch Republic. It consisted of five chambers – Amsterdam, Maze, Zeeland, the Northern Quarter (*Noorderkwartier*), and Groningen (*Stad en Lande*). To qualify as a major shareholder (*hoofdparticipant*) in the Amsterdam chamber, an investor had to commit *f*6,000, while the threshold for the other chambers was *f*4,000. City magistrates chose chamber directors (*bewindhebbers*) from among the major shareholders. Some of the directors were then tasked with representing the chamber on the company's governing body, which consisted of 19 men and was known as the Gentlemen Nineteen (*Heren Negentien*). Together, the representatives of the chambers accounted for eighteen of the nineteen seats as Table 2 shows. The nineteenth seat was for a representative sent by the States General.[30] The role of the States General in corporate governance of the WIC is a clear point of difference between that company and the VOC.

Table 2: Chamber directors and the Gentlemen Nineteen

Chamber	Number of directors	Number of directors in Gentlemen Nineteen
Amsterdam	20	8
Zeeland	12	4
Maze	14	2
Northern Quarter	14	2
Groningen	14	2
		1 (States General representative)

Source: Heijer, *De geschiedenis van de WIC*, 31.

In 1674 the first West India Company was dissolved and a second iteration established out of the failure of the first.[31] At that point, the governing board was reduced to ten men, the Gentlemen Ten (*Heren Tien*), made up of chamber directors from each of the five chambers plus a tenth member sent by the States General. Company activity and the seats on the board were divided according to the 'key of nine' (*negen sleutel*) whereby Amsterdam had four-ninths, Zeeland two-ninths, and the Maze, Northern Quarter and Groningen one-ninth each.[32]

[28] Petram, "The world's first stock exchange," 34; Jongh, "Tussen *societas* en *universitas*," 81, 94; Heijer, *De geschiedenis van de WIC*, 33.
[29] Heijer, *De geschiedenis van de WIC*, 33.
[30] Bick, "Governing the Free Sea," 107-111.
[31] Odegard, "Recapitalization of reform?." See also Norbert H. Schneeloch, "Das Grund- und Betriebskapital der Zweiten Westindischen Compagnie," *Economisch- en sociaal-historisch Jaarboek* 34 (1971).
[32] On the corporate structure of the Second WIC see Heijer, *De geschiedenis van de WIC*, 111-119.

Shareholder discontent

I have referred to shareholder discontent among VOC investors in the first two decades of the company's existence. A brief explanation of their grievances is useful, seeing as they effected some changes, at least on paper, and influenced the corporate governance of the WIC which was established in the midst of the protests.

In the lead up to the first VOC charter renewal, that is in the early 1620s, shareholders aired their grievances with the company in a series of pamphlets. Conflicts of interest between directors and shareholders and between the public functions and private funding of the company were at the heart of shareholder discontent. Shareholders perceived company directors as greedy and self-serving, more interested in their own personal profit – from commission on equipping ships, trading shares, and having first access to return goods – than in the financial health of the company pursuant to the interests of investors. A significant part of the problem was that shareholders had little to no access to information regarding the management and health of company finances. Directors' privileged access to information gave them powerful positions in the markets for shares as well as colonial goods which they exploited for personal profit to the detriment of company profits. Shareholders had little to no means of disciplining the company directors. The 1602 charter provided an exit-moment for investors at the closing of the first account but directors, with the support of the States of Holland, denied shareholders this opportunity. Dividend payments had been disappointing, especially for those who were paid in spices valued above their market prices by the company. When cash dividends were paid in 1620, the rate of return was disappointingly low (37,5 per cent).[33] Henk den Heijer and Ella Gepken-Jager comment on the continuity in structure betweeen the *voorcompagnieën* and the VOC: shareholders, as investors, provided the capital but had little to no say over management.[34]

According to Matthijs de Jongh, shareholder protests were aimed at changing the power dynamics within the company not at the destruction of the company in its entirety. Shareholders wanted greater access to information, greater oversight of and influence over decision-making within the company, and mechanisms to reign in the directors. Proposed changes to the company were intended to give major shareholders more power, leading de Jongh to conclusion that it was mainly major shareholders rather than shareholders generally who were agitating for change.[35]

The pamphleteering effected changes, at least on paper. The States General made changes to the governance structure of the company which should in theory, have

[33] Jongh, "Tussen *societas* en *universitas*," 80-101; Gaastra, *The Dutch East India Company*, 34-35; Heijer, *De geoctrooieerde compagnie*, 65-66, 87-68. On the matter of the exit-moment, it is important to note that denying investors the right to withdraw their capital gave the VOC the opportunity to make long-term investments in Asia and build an advantage over the EIC which lasted for about a century. The power of EIC shareholders was derived from their opportunity to choose whether or not to reinvest after each voyage, which constrained the directors. See de Jongh's comparison of the VOC and the EIC: Jongh, "Tussen *societas* en *universitas*," 110-119, esp. 118-119. .

[34] Heijer, *De geoctrooieerde compagnie*, 66-68, 81-67; Gepken-Jager, "Verenigde Oost-Indische Compagnie," 56.

[35] Jongh, "Tussen *societas* en *universitas*," 80, 89, 90-93.

increased shareholders' influence over management, but in practice, neither reduced the power of the chamber directors nor increased financial transparency. One of the changes made was the creation of commissions of major shareholders who were given limited access to the company's financial records. However, according to Petram, the commissioners became "deputy company directors" instead of being the shareholders' watchdogs.[36] The WIC suffered as a result of the ructions: the new company struggled to attract investors in the midst of the conflict between the VOC and its shareholders. Petram contends that while the pamphleteering was an outpouring of grievances, "the most forceful demonstration" of VOC shareholders' discontent was the pedestrian investment in the WIC.[37] On the other hand, there are also indications that the corporate governance of the WIC was different from the VOC from the outset, likely in response to the tensions. Shareholders had some say in the nomination of new directors and limited monitoring of company accounts. In 1623, the major shareholders and directors agreed that a commission of major shareholders would be allowed access to the books and then report back to their fellows. This leads Henk den Heijer to conclude that shareholders in the WIC had a number of "core rights" from the outset, which guaranteed them some supervision over the company policy.[38] VOC shareholders were not as fortunate, according to Johannes Gerard van Dillen. He concludes that changes introduced in the 1623 charter afforded some say to the major shareholders, while the rest of the shareholders had no influence over or supervision of company policy. Thus, "the management of the VOC retained its oligarchic character."[39]

VOC shareholder discontent seems to have evaporated with the more regular payment of dividends in cash from the 1620s onwards. The lack of protest once dividend payments picked up points to another set of frustrations: unmet expectations of returns on their investments. Of course the two motivations are not mutually exclusive. After the contentious first charter renewal in the 1620s, there were no similar shareholder-company conflicts over corporate governance in the lead up to the subsequent charter renewals, nor did the internal organisation of the company change in any meaningful ways over the course of its existence deep into the eighteenth century.[40]

Another element which explains the lack of protests in later years is the shifting interests of VOC investors. In the early years of the company's existence, investors put their capital into the chambers as a way of signalling their interest in and support for the trade between Europe and Asia. Investment was a condition for securing positions in the chambers and on the governing board of the company. Over time, Lodewijk Petram suggests, interest in overseas trade and acquiring company positions gave way to the financial services offered by the secondary market. During the 1630s and 1640s share trading increased rapidly which Petram takes as proof that VOC shareholders accepted the limited power afforded them in management. This acceptance, he says, "suggests that

[36] Petram, "The world's first stock exchange," 34-35.
[37] Ibid., 34.
[38] Original: "*kernrechten*" Heijer, *De geoctrooieerde compagnie*, 82-83.
[39] Original: "*bleef het bestuur der V.O.C. een oligarchisch karakter dragen*" Dillen, *Aandeelhoudersregister*, 30.
[40] Jongh, "Tussen *societas* en *universitas*," 101.

investors increasingly used the market for purely financial purposes – they aimed increasingly at earning short-term profits rather than at holding a long-term position in the VOC to support the company and its trade with the East Indies."[41]

Trading shares

VOC shares could be bought and sold from the outset. Account books attest that the trade started almost immediately: shares were traded even before investors had furnished the final instalment of their subscriptions.[42] The account book set out the regulations for transfer of ownership, which had to be witnessed by one or two chamber directors. A standardized form was used for the procedure which had to be signed by buyer, seller and director, and then the bookkeeper would credit the account of the new owner in the chamber's books. No share papers were issued; the account books were the only proof of ownership.[43] Shares were not transferable between chambers with the result that not one, but six secondary markets for VOC shares developed. Henk den Heijer emphasised that Amsterdam was the centre of the share trade, both for VOC shares and in the eighteenth century at least, for WIC shares too.[44] Lodewijk Petram makes the same point regarding the vibrancy and innovation of VOC share trading in Amsterdam, claiming that the markets in the other chamber cities were peripheral, characterised by lower levels of activity and different development trajectories.[45]

The primary market for company shares was the first subscription when shares were bought from each of the chambers directly; all other share purchases constituted secondary market deals. The simplest form of share trading was sale followed by transfer of ownership in the chamber books. Inheritance was a subset of this kind of transfer of ownership. As early as 1607, there is evidence in notarial deeds of derivatives, specifically forward contracts. Futures and options were also traded, but forward contracts, a familiar instrument used by Antwerp grain traders on the Amsterdam market, became the most important of the derivatives from the 1650s onwards.[46] Trading in derivatives did not necessarily involve transfer of ownership of the underlying shares in the company books. Instead, this speculative trade was based around profiting from changes in the share price. Den Heijer points out that the share price was not driven by excellent company results or high dividends, but rather was rooted in confidence, perception and outlook which were in turn influenced by political events as well as rumours.[47]

That the company permitted the trade in shares was not sufficient for the secondary market to grow. Petram points out the importance of contract enforcement mechanisms for the share trade as well as the existence of commercial law as a framework

[41] Petram, "The world's first stock exchange," 36.
[42] The plan set out in the charter was that the subscriptions would be paid in three instalments. 1602 Charter Article 11 in Witteveen, *Een onderneming*, 89. On the rapid start to share trading: Petram, "The world's first stock exchange," 2.
[43] Heijer, *De geoctrooieerde compagnie*, 97-98.
[44] Ibid., 105, 107.
[45] Petram, "The world's first stock exchange," 7-8.
[46] Ibid., 20.
[47] Heijer, *De geoctrooieerde compagnie*, 98-105.

for the share trade.[48] From an institutionalist perspective, these were necessary to lower transaction costs. He argued that the sentences passed by the Amsterdam Court and the Court of Holland in between the formation of the VOC in 1602 and the 1630s clarified the legal principles upon which the secondary market in shares functioned. As a result, share traders did not use the court for similar disputes after the 1630s. The Court of Holland's jurisprudence, Petram argues, essentially amounted to securities law.[49]

The cases which Petram examined in the Court of Holland records dealt with three legal principles related to contract enforcement – ownership and transfer of ownership, endorsement, and terms of settlement of transactions. The litigants in these cases were share traders who used the courts to settle disputes among themselves.[50] The cases which will be examined in the remainder of this chapter arose out of disputes between shareholders on the one side, and the chambers of the VOC on the other.

Court cases

As Lodewijk Petram has shown, VOC shareholders and traders made use of the courts in Holland to resolve conflicts over shares, at least until the 1630s. Petram focussed specifically on the secondary market in Amsterdam and the cases arising in disputes over share trading in that city. Here I will address litigation between shareholders and the company chambers, both from Amsterdam and from the chamber Zeeland. In fact, the first share-related case between a shareholder and a chamber was over shares in the Zeeland chamber which had been purchased by foreign merchants living in Middelburg. The way that shares were treated as a kind of collateral against commodity purchases comes to the fore in this case. The Zeeland chamber was involved in litigation again in the early eighteenth century in a chain of connected cases which were about an alleged erroneous transfer of ownership in the chamber's account book. The last case to be examined in this section, also dating from 1714 and 1715, dealt with tying up the estate of a wealthy member of the Portuguese Nation, David de Pinto, who was a shareholder in the Amsterdam chamber. Together, the cases highlight four issues: the link between shares and commodity purchases; foreign investors in the company; company procedure in transfer of ownership; and shares as inheritance. All four of these topics are taken up in the more detailed analysis of the legal proceedings between the Bartolotti family and the VOC Chamber Hoorn later in this chapter.

Shares and spices

The earliest dispute over ownership of shares arose in the High Court in 1621 between the VOC chamber Zeeland and an English merchant based in Middelburg named Thomas Laleij. Laleij claimed ownership of shares in the Ten Year account (*tienjarige rekening*) as well as in the expedition of the Fourteen Ships which sailed under van Warwijk. He

[48] Petram, "The world's first stock exchange," 91-92.
[49] Ibid., Ch 3.
[50] Ibid., 92, 97-107.

claimed to be the legal owner of the shares which were in the name of another Englishman, Thomas Owens. Owens was indebted to Laleij; in August 1610 he transferred his shares in the two accounts to Laleij to repay his debt. When Laleij approached the directors of the Zeeland Chamber requesting that his own name be recorded in the company books, as the legal holder of the investments, the chamber refused his request. According to the directors, Owens owed the company money. He had purchased spices from the chamber – both pepper and nutmeg – but had not paid for them in full. On those grounds the company refused to transfer Owens' shares into Laleij's name.

For a number of years Laleij tried in vain to get the shares transferred into his name in the company books and to see the accounts on which the company based their calculations of Owens' debt. In 1612 Laleij had a warrant (*insinuatie*) drawn up against the chamber, to compel the chamber to transfer the shares into his name. Eventually, Laleij took the matter to court – he sued the Zeeland chamber in the Middelburg court (*burgermeesters en schepenen*). The court ordered the parties to reach a settlement between themselves, but nothing came of the meeting. The court then moved to sentencing the case: the directors of the VOC Chamber Zeeland, the defendants in the first instance, were sentenced to transfer the shares into Laleij's name in their books. In turn, the court sentenced Laleij to pay the chamber the sum still outstanding for Owens' purchase of nutmeg, plus interest. This sentence was passed in 1617.

The Zeeland Chamber felt that it was disadvantaged by the sentence of the Middelburg court and so appealed the sentence in the High Court. However, in July 1621, the High Court upheld the Middelburg sentence, declaring that the chamber was not aggrieved by the lower court's ruling.[51]

In this case a number of issues are intertwined – debt and repayment, the transferability of company shares, and payment for spices. The chambers of the VOC held shareholders in the company ransom for the repayment for commodities purchased from the chambers, as seen in this case but also in other disputes over shares, including the case between the Chamber Hoorn and Bartolotti which is analysed in detail later in this chapter. This strategy was possible when the same men who invested in the company also purchased spices from the chambers. But like the cases which Petram analysed in the Court of Holland, the outcome of the case between Laleij and the Chamber Zeeland had serious consequences for the vitality of the secondary market. How would the court deal with claims on shares which had been sold, and what was the responsibility of the buyer to fulfil those claims?

The sums which Thomas Owens invested in the two accounts were dwarfed by the value of the spices which he purchased from the chamber. Thomas Owens was an investor in the expedition of the 'Fourteen Ships', in which he had a share valued at 550 Flemish pounds, or *f*3,300. The second sum, 400 Flemish pounds (*f*2,400), was invested in the Ten Year account. In contrast to these modest investments, in August 1608, he made an enormous purchase of nutmeg. The quantity was not stated in the court records but the

[51] The above summary of the case is based on NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *714* (1621) Geextendeerde sententie, scans 44-50; inv. nr. *642* (1621) Resoluties, scan 130; inv. nr. *935* (1621), Register der dictums...gepronuncieert, scan 8.

nutmeg was valued at 3646/7:10:8 Flemish pounds, or approximately *f*22,000.[52] A year later he purchased nine bales of pepper from the chamber, which was valued at 392:8:5 Flemish pounds, equivalent to just over *f*3,250.[53] It should be noted that both of these purchases were made in the period when the shareholders awaited dividends – it was only in 1610 that they received the first payment, in a combination of cash and kind, specifically mace and pepper.[54] As mentioned earlier, the non-payment of dividends contributed to shareholder discontent in the years leading up to the expiration of the first charter in 1623.

It was perhaps the anticipation of dividends which motivated Thomas Laleij to pursue his claims against the VOC Chamber Zeeland to the Middelburg court. According to Femme Gaastra, investors in the 'Fourteen Ships' received a dividend of 265% between 1605 and 1614.[55] Laleij's claim to the shares included that he be recognised as any other investor, denoted as *participant.* In other words, he claimed both the capital and the return on that investment from 1610, when Owens ceded the shares to him.[56] Dividends arising out of the 'Fourteen Ships' account were separate from those of the Ten Year account. The early voyages had delivered stunning returns – rumoured to be 399% for the 'Second Voyage'- but dividends from the Ten Year account were not only slow, but also disappointing. In spite of initial promises, that account was still not closed in 1622.[57]

A bookkeeper's error

During the 1710s, the High Court dealt with multiple cases arising from a clerical error in the VOC Chamber Zeeland's records of shareholders. The court records show that the same three parties were involved in multiple cases, in different configurations, as each party tried to exploit litigation options. The second point to come out of the resolutions of the High Court point to the Chamber's concerns over liability – who should be held responsible for the error? It was a matter on which the judges in the High Court did not all agree.

Ferdinand van Hatting, Thomas Alexander Coninck, and the VOC Chamber Zeeland were named as parties in multiple High Court cases in 1715 and 1717. The issue at the heart of their dispute arose in 1679. In that year, Pieter van Hatting Senior passed away. He left his sons, Ferdinand and Pieter Junior, shares in the VOC Chamber Zeeland worth 1000 Flemish pounds (*f*6,000). On 2 May 1679 Pieter Junior's half of the share was transferred into his own name in the chamber's book, while Ferdinand's half remained in his father's name.[58] According to Ferdinand, his brother Pieter collected their dividends

[52] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *714* (1621), Geextendeerde sententie, scan 45.
[53] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *714* (1621), Geextendeerde sententie, scan 44.
[54] Gaastra, *The Dutch East India Company*, 24.
[55] Ibid.
[56] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *714* (1621), Geextendeerde sententie, scans 45-6.
[57] Gaastra, *The Dutch East India Company*, 25. The company recounted in the sentence that Thomas Owens had been paid dividends on his shares in the period preceding 1610. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *714* (1621), Geextendeerde sententie, scans 44-5.
[58] Ferdinand van Hatting even went so far as to specify the folio on which these shares were recorded. Pieter Senior's share was recorded on f. 32 of the Chamber's book, and Pieter Junior's on f. 128.

and gave Ferdinand his share, until 1703. Ferdinand told the court that in August 1679 Pieter Junior sold his share to Abraham van Pere. Instead of the chamber bookkeeper transferring Pieter Junior's share into van Pere's name, Ferdinand claimed that the bookkeeper transferred Pieter Senior's share to van Pere instead.[59] Ferdinand's attempts to be recognised as the rightful owner of the shares led to legal proceedings, first in the Court of Holland, and then in the High Court.

In 1704 Ferdinand van Hatting received permission from the court to proceed against van Pere's son-in-law, *Meester* Thomas Alexander Coninck, and the VOC chamber Zeeland, to sentence them both to restore the 500 Flemish pounds into Pieter van Hatting Senior's name in the chamber's books as well as any dividends which had been paid to shareholders since May 1703, with interest. The Provincial Court sentenced the heirs and chamber directors on 7 April 1713. The High Court resolution does not specify what that sentence entailed but Coninck and the chamber were the ones who chose to appeal in the High Court. The High Court considered the directors to have made an error which should not negatively impact van Pere's heirs because van Pere had purchased the shares and it was no fault of his, but nor should it negatively impact Ferdinand van Hatting. Thus the High Court upheld the Court of Holland's sentence.[60]

On the very same day, 17 December 1715, the High Court passed a sentence in a related case. The directors of the Zeeland chamber were the plaintiffs; Thomas Alexander Coninck was the named defendant. Coninck had summoned the chamber to court in a case of indemnity, claiming that the chamber should indemnify him and his unnamed associates (*cum sociis*, being the fellow heirs of Abraham van Pere) against the legal proceedings and their consequences, set in motion by Ferdinand van Hatting. The chamber's response was to shift the blame from the chamber as a whole to the bookkeeper (*boekhouder*) specifically. The court ruled that the chamber should indeed indemnify Coninck, which decision the chamber appealed in the High Court. While the judges in the case did not agree on whether or not the bookkeeper should be held responsible rather than the chamber directors, they were in agreement that the chamber was not aggrieved by the sentence in the indemnity case.[61]

The legal provision *in solidum* was significant to the shape that the cases arising from the clerical error took. Ferdinand van Hatting was granted permission to summons both Coninck and the chamber directors to court, and to claim his shares from them *in solidum.* When the Provincial Court sentenced Coninck and the Chamber directors to recognise van Hatting's shares, if either of them made good on that, the other was freed of responsibility.[62] The indemnity case arose from this verdict: the court sentenced the

[59] Abraham van Pere was a merchant from Vlissingen and director of the WIC chamber Zeeland. He was granted a charter by that company in 1627 to establish a colony in Berbice. Heijer, *De geschiedenis van de WIC*, 91.

[60] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *666* (1715) Resoluties, scan 81 [VOC Chamber Zeeland and Coninck vs. van Hatting].

[61] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *666* (1715) Resoluties, scan 81 [VOC Chamber Zeeland vs. Coninck]. See also Punt, "Het vennootschapsrecht," 207-213.

[62] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr, *807* (1715) Geextendeerde sententies, f.241v scan 244 [Coninck vs. van Hatting].

Chamber to indemnify Coninck from legal proceedings and their outcomes, which can be interpreted to mean that the Chamber was from then on, responsible for the matter.[63]

Finally, it is useful to note that the men involved in the case were all high-profile civic office holders. Ferdinand van Hatting had legal training, as seen in the designation *meester*, and he is recorded as former burgomaster and council member of Utrecht, and a delegate to the Generality's Accounting Office.[64] Similarly, Thomas Alexander Coninck was prominent in civic life, but in Zeeland. He was a director of the Zeeland chamber of the VOC from 1708 until 1737. He was therefore a director at the time of the High Court's rulings. Moreover, he was bailiff and council member of Veere, as well as having the title marquis of that city. Through marriage he was related to the wealthy van Pere family, and in the capacity as representative (*procuratie hebbende*) and heir of Abraham van Pere, was named in the case with the chamber and Coninck.[65] Abraham van Pere who purchased the shares from Pieter van Hatting Junior is someone better known for his Atlantic exploits than his involvement in the VOC. He was a merchant from Vlissingen, who, in 1627, received a charter from the West India Company to establish a colony in Berbice. He was also a shareholder in the Zeeland chamber of that company.[66] According to his heirs, while he was alive Abraham van Pere bought and sold numerous shares in the Zeeland chamber of the VOC too, the *f*3000 from Pieter van Hatting being one among many.[67]

Tying up David de Pinto's estate

From prominent investors in the Zeeland Chamber we now turn to Amsterdam, where, from the 1640s, members of the Portuguese Nation in that city became important players in the secondary market for VOC shares. By the 1660s, members of the Nation came to dominate the market. This was a period of great commercial success for the Portuguese Nation in Amsterdam, some of whose members had established themselves as eminent merchants and bankers.[68] Among these success stories was the de Pinto family which originated from Portugal, migrated to Antwerp, from there to Rotterdam, and then a branch of the family made Amsterdam their home.[69] During his life, David de Pinto, in the Amsterdam branch, was one of the wealthiest men of the Portuguese Nation. In addition

[63] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *666* (1715) Resoluties, scan 81 [VOC Chamber Zeeland vs. Coninck].
[64] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *807* (1715) Geextendeerde sententies, f.240r-v, scans 242-3 [Coninck vs. van Hatting].
[65] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *807* (1715) Geextendeerde sententies, f.240r, scan 242 [Coninck vs. van Hatting]; Data VIDI.
[66] Heijer, *De geschiedenis van de WIC*, 91.
[67] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *807* (1715) Geextendeerde sententies, f.242r, scan 244 [Coninck vs. van Hatting].
[68] Petram, "The world's first stock exchange," 42. On the social make up of the nation and their commercial interests and ties see Daniel Swetschinski, "The Portuguese Jewish Merchants of seventeenth-century Amsterdam: A social profile" (PhD, Brandeis University, 1980).
[69] H. P. Salomon, "The 'De Pinto' Manuscript: A 17th century Marrano family history," *Studia Rosenthaliana* 9 (1975). See also H. S. de Bruyn Kops, *A Spirited Exchange: The wine and brandy trade between France and the Dutch Republic in its Atlantic framework, 1600-1650* (Leiden and Boston: Brill, 2007), Chapter 5.

to wealth, the de Pinto family had influence and cultivated political connections inside the Republic and beyond. When David de Pinto died, there were complications in tying up his estate, some of which led to legal proceedings between the executors of his estate and the VOC chamber Amsterdam.[70] The sentences passed by the High Court in 1714 and 1715 provide insight into some of these difficulties, namely the sale of VOC shares to cover bequests and debts in the estate.

The wealthy and well-connected de Pinto family proceeded against the VOC Chamber Amsterdam in the High Court over shares which were part of David de Pinto's estate. Unusually, the case was heard by the High Court in first instance (*rau actie*) which may be a sign of the great power and influence the family held in political and commercial circles in the Republic. That they used the High Court in first instance is not an indication that members of the Nation were treated as foreigners. In the late sixteenth and early seventeenth century, subjection had been a matter of negotiation and debate, but from the mid-seventeenth century, the Portuguese Nation was considered by the States General as subjects rather than as foreigners.[71] It is more likely that the claim was considered a property dispute: hearing cases regarding property claims was one of the High Court's competences, as mentioned in the Introduction.[72]

When David de Pinto died he left "very many East Indies shares" as part of his estate.[73] The executors of David de Pinto's estate, Aron and Joseph de Pinto, initiated the proceedings against the chamber. According to the court's records, David de Pinto had named his children as his heirs and made bequests. In order to fulfil these bequests as well as satisfy creditors, the executors had to sell some of the many VOC shares. It appears that the Amsterdam chamber refused to allow the sale. The executors went to court in order to have the bench sentence the chamber directors to transfer all the shares in de Pinto's name into that of the executors, in their capacity as executors, in order that they could sell the shares to rescue the estate.[74] In their response, the chamber directors mentioned three different shares in the chamber, which together point to the enormous wealth of the de Pinto family. The first was a share worth *f*9,000 which the chamber directors indicated David de Pinto had lost; the second was valued at *f*36,000 but had the condition attached that it could not be sold within 12 years; and finally the directors mentioned other shares which de Pinto had left to his descendants.[75] The chamber refuted the executors' claims by stating that the bequests were made in shares, and that the few

[70] David de Pinto's profile mentions the "complicated division of the estate" which yielded only a small inheritance for his sons. http://www.bethhaim.nl/david-de-pinto/ (accessed 2017-07-20).
[71] Cátia Antunes and Jessica Vance Roitman, "A war of words: Sephardi merchants, (inter)national incidents, and litigation in the Dutch Republic, 1580-1640," *Jewish Culture and History* 16, no. 1 (2015): esp. 25-32.
[72] Punt, "Het vennootschapsrecht," 7-8.
[73] Original: *"seer veel Oostindische actien".* NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *666* (1714), Resoluties, scan 15.
[74] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *666* (1714) Resoluties, scan 15.
[75] Regarding the 'lost' shares, the directors used the statement *absolut heeft weggemaakt*, but what exactly that means in the context is unclear. Considering that the case was about control and oversight of sales, it is possible that it refers to having lost control of the share, rather than having mislaid it or sold it. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *666* (1714) Resoluties, scan 15.

debts which were outstanding could be paid off through sale of other goods in the estate.[76] This would indicate that part of the problem was whether the shares were in fact the inheritance, and therefore should not be sold but transferred, or if bequests had been made to be paid in sums of money, thus requiring the asset value of the shares to be made liquid. On 11 May 1714, the High Court decided that the chamber should put David de Pinto's shares into the executors' names so that they, the executors, could trade the shares "in accordance with the tenor... of the last will of D. de Pinto."[77]

The following year, the executors submitted a request to the court that the bench interpret their 1714 sentence.[78] Specifically, the executors sought the court's declaration that the Amsterdam chamber had no authority over or facility to check on the reasons behind the handling of the shares or the use to which they were put. Contrary to this, the chamber directors claimed that it was their responsibility to make sure that the shares were sold and handled according to the will and codicil made by David de Pinto. In this way, the chamber tried to maintain control of the very large parcel of shares in the de Pinto estate. However, the court did not recognise that responsibility; rather, the bench adjudicated the executors the freedom of action they had requested.[79] In reaching this verdict, the High Court limited the role of the Amsterdam chamber directors by recognising the authority of the executors to tie up the estate according to de Pinto's wishes, including selling his many shares in the VOC Chamber Amsterdam.

The Bartolotti family

Inheritance played a crucial role in the case which was heard in the High Court decades earlier, which involved another prominent merchant family from Amsterdam, namely the Bartolotti family. The focus of the remainder of this chapter is on the Bartolotti family, their commercial ties and long-running dispute with the VOC. While the family was resident in Amsterdam, and had Dutch roots, they were well-connected in Italian and Southern Netherlands trade circles. To begin with, diverse sources will be brought together to sketch a portrait of the family's investment and trading portfolio and their ties through blood, marriage and commerce to other prominent and influential people in the Republic, England, Venice and Bologna. This sketch of the family background and mercantile activity in Amsterdam is followed by detailed analysis of the family's decades long legal dispute with the VOC Chamber Hoorn, over shares in that chamber valued at *f*39,000. The case reveals complex share transfers in one of the chambers considered peripheral by historians, and which has received little attention when it comes to the workings of the secondary market for VOC shares. Moreover, the case shows the way that the VOC countered the claims, insisting on company procedure. Family connections,

[76] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *666* (1714) Resoluties, scan 15.

[77] Original: "*conform den teneur van testamente...van uijterste wille van D de Pinto."* NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *666* (1714) Resoluties, scan 15.

[78] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *666* (1715), Resoluties, scan 75.

[79] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *666* (1715), Resoluties, scan 75.

bankruptcy, debt, spices, and other courts' sentences all come together in the dispute between the Bartolottis and chamber Hoorn.

Figure 10: The Bartolotti house on the Herengracht, Amsterdam.

Isaac Gosschalk, Huis Bartolotti aan de Herengracht 170-172, 1862. Rijksmuseum, Amsterdam.

Commerce and kin

Guillielmo Bartolotti I was born in Hamburg in 1560. It was not until some years later that he came to be known by that name. He was born Willem van den Heuvel, son of Christiaan van den Heuvel and Jenne de la Bay. When Christiaan van den Heuvel and Jenne de la Bay died leaving their children orphaned, Jenne's sister Maria and her husband Giovanni Baptista Bartolotti raised their nephew and niece, Willem and Cornelia, as their own. Willem van den Heuvel and Cornelia were made universal heirs of Giovanni Baptista Bartolotti, a nobleman from Bologna and man of considerable wealth, on condition they took the name Bartolotti. Willem van den Heuvel thus came to be known as Guillielmo Bartolotti. He learned the world of trade from his uncle/adoptive father and produced three volumes in Italian regarding their business between 1582 and 1591.[80]

Guillielmo Bartolotti I married Maria Pels in 1589. She died the following year, most likely in childbirth, but the baby boy survived and was named Jan Baptista. In 1593 Guillielmo Bartolotti remarried: his second wife, also named Maria, was part of the eminent Thibault family from Middelburg. Guillielmo Bartolotti I and Maria Thibault, also referred to as Margareta, had thirteen children, one of whom was Guillielmo II (1602).[81]

[80] Gustav Leonhardt, *Het huis Bartolotti en zijn bewoners* (Amsterdam: Meulenhoff Nederland, 1979), 14-15.
[81] Ibid., 16, 17, 20.

Guillielmo Bartolotti I's oldest son, Jan Baptista, married Eleonora Hellemans who was the daughter of Arnout Hellemans and Susanna van Zurck (Surck?), a family originally from Antwerp but like the Bartolottis, resident in Hamburg for a time.[82] Guillielmo Bartolotti II also married into a family with Southern roots. He married Jacoba van Erp, from an Antwerp family. They had eight children, including Guillielmo III (1638).[83]

From the outset, the Bartolotti family was involved in the Dutch East India Company, despite the fact that they were not yet resident in the Republic. In 1602, Guillielmo Bartolotti I invested *f*4,000 in the Zeeland chamber through the intermediary Balthasar van Vlierdingen, a Southern Netherlander.[84] At the time Guillielmo Bartolotti I and his family were living in Emden.[85] From 1603-9 the family lived in Haarlem, but already during that time, notarial deeds indicate that Bartolotti I was involved in the commercial life of Amsterdam. Other than his investments in the VOC, Bartolotti I also invested in the WIC after it was created in 1621.[86] In fact, he was a director in the chamber of Amsterdam, likely one of the founding directors.[87] According to the register of investments in the chamber (*Grootkapitaalboek Kamer Amsterdam*) Guillielmo Bartolotti I invested a total of *f*100,000 over three subscriptions (*f*63,000; *f*6,000; *f*31,000) which were registered for the account of G.A.I.C.F.D.B and Company.[88] It is likely that this is the huge investment to which den Heijer referred when he wrote that of the largest investors in the Amsterdam Chamber of the WIC, one was a consortium of merchants led by Guillielmo Bartolotti.[89] But who these merchants were is unknown. It looks like Bartolotti I also invested in the WIC individually – an entry for *f*6,000 only in the name of Guillielmo Bartolotti is recorded. In that entry his function is recorded as director (*bewindhebber*).[90]

Like his father, Bartolotti II was also invested in both the VOC and the WIC. Bartolotti II (named Bartolotti de Jonge in the register) also invested *f*6,000 in the Amsterdam chamber.[91] There is a second entry under his name but no amount is filled in.[92] Bartolotti II was also a shareholder in the Amsterdam chamber of the VOC. A notarial

[82] Ibid., 22.
[83] Dillen, *Aandeelhoudersregister*, 65.
[84] Ibid., 64. Bartolotti I gave van Vlierdingen power of attorney in 1609 to transfer a parcel of shares to one Jasper van Dortmont. SAA, NA, 116, f. 92v; 1609-06-15. From notarial deeds it seems likely that he held shares in the Amsterdam chamber too – in 1640 and 1643 two brokers appeared before the notary J. van de Ven to give statements on the price of shares in the Amsterdam chamber and the chambers outside Amsterdam. And this for both the VOC and the WIC. The men confirmed that they had brokered buying and selling of shares at the prices they stated. SAA, NA, 1059, f. 13; 1640-12-19 and 1072, f. 72; 1644-10-03. Van Vlierdingen, or Vlierden, is named in the 1602 charter amongst the directors. Article 19 published in Witteveen, *Een onderneming*, 91.
[85] Guillielmo Bartolotti II was born in 1602 in Emden, according to Leonhardt. Leonhardt, *Het huis Bartolotti*, 16. According to Dillen, the family was actually living in Hamburg. Dillen, *Aandeelhoudersregister*, 64.
[86] See Norbert H. Schneeloch, *Das Kapitalengagement der Amsterdamer Familie Bartolotti in der Westindischen Compagnie* (Klett-Cotta, 1978).
[87] Laet, *Iaerlijck Verhael*, 32.
[88] NL-HaNA, OWIC, 1.05.01.01, inv. nr, *18B*, f. 37 (Kaartenbak chronologisch: 183).
[89] Heijer, *De geoctrooieerde compagnie*, 76.
[90] NL-HaNA, OWIC, 1.05.01.01, inv. nr. *18B*, f. 142 (Kaartenbak chronologisch: 707).
[91] NL-HaNA, OWIC, 1.05.01.01, inv. nr. *18B*, f. 53 (Kaartenbak chronologisch: 265).
[92] NL-HaNA, OWIC, 1.05.01.01, inv. nr. *18B*, f. 257 (Kaartenbak chronologisch: 1001).

deed indicates that at the time of his death, in 1660, he owned *f*28,550 worth of shares in the chamber.[93]

The Bartolottis were involved in trade and banking beyond shareholding in the VOC and WIC. Of the family's commercial activities, van Dillen states:

> The Bartholotti house conducted substantial trade with Italy and the Levant while also keeping themselves occupied with the import of copper from Scandinavia. It is well-known that the firm lent important credit to the Stadholder Fredrik Hendrik and later to his widow. The Bartholotti house, which, like the Coymans firm, took part in the gold and silver trade, was worth more than f2,5m at the Exchange Bank in 1645.[94]

Bartolotti I's diverse portfolio of investments and trading activities is evident in the Amsterdam notarial deeds. In the early seventeenth century Bartolotti I was associated with Jan Calandrini in shipping grain and other merchandise to Genoa, La Spezia, Viaregio and Livorno, and Naples, Ancona, Venice, London, and the Barbary coast.[95] The Bartolottis were also involved in importing copper from Sweden, evident in the notarial deeds drawn up in Amsterdam in the 1660s.[96] They were involved in the Levant trade, and in brazilwood trade.[97] The picture that emerges from the familial and business connections cultivated by the Bartolottis is a family of great fortune, with a diverse portfolio of investments and interests.

Litigation against the VOC

During the 1640s and 1650s, the Bartolotti family was involved in a legal dispute with the directors of the VOC Chamber Hoorn. The case was first heard in the Court of Holland, brought by the Bartolottis against the directors. Perhaps the reason it started in that court, rather than a city court, was the fact that the case was pursued by a widow, Margareta

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[93] SAA, NA, 1132, f. 177v; 1660-02-18. Jacoba van Erp, widow of Bartolotti II, gave power of attorney to Justus Baack and Gerard Hasselaar to transfer the shares in the Amsterdam chamber books from Bartolotti's name into her own.

[94] Original: "*Het huis Bartholotti dreef een aanzienlijke handel op Italië en de Levant, doch hield zich o.a. ook bezig met invoer van koper uit Scandinavië. Het is bekend dat de firma belangrijke kreditien heeft verschaft aan stadhouder Frederik Hendrik en later aan diens weduwe. Het huis Bartholotti, dat evenalas de firma Coymans aan de goud- en zilverhandel deelnam, verrekende in 1645 ruim f2.500.000 met de Wisselbank.... In 1689 is de firma opgeheven*." Dillen, *Aandeelhoudersregister*, 64-65.

[95] SAA, NA, 105, f. 6-6v; 1606-09-01. SAA, NA, 110, f. 14-15v; 1607-10-04. London: SAA, NA, 111, f. 224v-225v; 1608-06-10. Ancona: SAA, NA, 106, f. 41v-42v; 1606-12-02. Salag Laragie: SAA, NA, 104, f. 27-29; 1606-03-13. Jan Calandrini was born in 1544 in Lucca. In 1581 he married Marie de Maistres in Antwerp and together they moved to Frankfurt, Hamburg, Stade and Emden before establishing themselves in Amsterdam in the early 1600s. Calandrini was tied through his daughter's marriage, to another prominent protestant family which had left Lucca for religious reasons, namely the Burlomachis. Philipo Burlomachi and Elisabeth Calandrini moved to London where, from 1613-1633, Philipo was army supplier (*legerleverancier*), *betaalmeester* and banker (*bankier*) for James I and Charles I. Leonhardt, *Het huis Bartolotti*, 19.

[96] SAA, NA, 3191, f. 83; 1667-02-24 and 3192, f. 66v; 1667-08-18.

[97] Levant trade: K. Heeringa and J. G. Nanninga, eds., *Bronnen tot de geschiedenis van de Levantschen handel* (Den Haag: Martinus Nijhoff, 1910), I:504-507. No. 243: Request van Amsterdamsche kooplieden aan de Staten-Generaal tot benoeming van een hoofd-consul te Aleppo, 1625. Brazilwood: SAA, NA, 1096, f. 436-7v; 1651-04-28.

Thibault, widow of Guillelmo Bartolotti I. By the time the case was appealed in the High Court, she had also passed away. The litigants were recorded as Guillielmo Bartolotti, for himself and the other heirs of the deceased Margareta (Maria) Thibault, widow of Guillielmo Bartolotti the elder.[98] Their claim was to be recognised as the rightful owners of shares in that chamber worth *f*39,000. The Court of Holland denied their claim, which sentence the family appealed in the High Court. The sentence passed by the High Court in the 1650s indicates that there were two other court sentences which had been passed earlier in related matters; it was those sentences which formed the basis of the parties' claims. In underpinning the legitimacy of their claim, the Bartolottis recounted in great detail the initial investment made in the Hoorn chamber in the Ten Year account, and the way in which shares had been transferred between relatives, as inheritance and to repay debts. A complex picture of the informal transfer of shares comes to light. The VOC countered the claims made by the family by going back to the company's charter and the practice of using shares as collateral against debts to the company chambers racked up by defaulting purchasers. There were two critical factors in the company's position: a bankruptcy case and attendant sentence, and the inviolability of the chamber account books as proof of ownership of shares. A summary of the High Court sentence is instructive in seeing the connections between the parties' positions and the sentences of other courts which loom in the background.

Persistent litigation

The dispute between the Bartolottis and the Chamber Hoorn began in the Court of Holland in first instance, where the Bartolottis summoned the chamber directors to court. That court likely passed a verdict in early 1644, for it was in May of that year that the Bartolottis were granted permission to appeal the verdict in the High Court. First Hendrik Boom, and after his death, Ravenstijn, represented the Bartolottis in the capacity of lawyer (*procureur*) in their attempt to have the High Court nullify or correct the Court of Holland's sentence, and adjudicate their claim to the shares. The VOC Chamber Hoorn was represented by Pieter Luchtenburch and later by Gerrit Vinck who argued that the High Court should approve the Court of Holland's sentence. The High Court deliberated over the matter for more than a decade: the judges pronounced their verdict in the case in December 1655. The plaintiffs in the case were Guillielmo Bartolotti (II) and the other heirs of Margareta (Maria) Thibault, widow of Guillielmo Bartolotti I. The defendants in the case were the directors of the Dutch East India Company.[99] The dispute between them arose over ownership of *f*39,000 of shares in the Hoorn chamber: the plaintiffs' claim was that the company recognise them in the chamber books as the owners of the shares in place of van Surck denoted by the initials GBQ, and that they be back paid dividends and interest of 8% from 1617 onwards.[100] Their claim was based on complex transfers of

[98] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *747* (1655), Geextendeerde sententie.
[99] In many of the other cases against the directors of the VOC, the chamber was specified. However, in this particular case no chamber was specified.
[100] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *747* (1655), Geextendeerde sententie.

assets between numerous people, including through repayment of debt, and inheritance. The Hoorn Chamber refuted the claim, based on a case of bankruptcy, and by not acknowledging the transfer of shares by which the plaintiffs made their claim.

Bartolotti *et al* traced their claim to shares to the fact that they were heirs of Maria Thibault, their mother. As the widow of Guillielmo Bartolotti I, she made a claim against the insolvent estate of deceased Antwerp merchant Anthonij van Surck. Van Surck, who was indebted to the Bartolottis when he died, was the original investor in the Hoorn chamber, although, as will be picked up in more detail later, he invested under someone else's name. The Court of Brabant (*Raad van Brabant*) ruled in favour of the creditors in the case, by virtue of which verdict the Bartolottis made their claim to the shares.[101]

The VOC countered the claim to the shares by focussing on the man in whose name the initial investment was made – Caspar Quinget, merchant in Amsterdam and nephew of Anthonij van Surck.[102] The Quinget family was related by marriage to the van der Veken family who, with others such as the Hellemans, together formed part of an international merchant network.[103] In 1617 Quinget went bankrupt (*komen te faileren*) and as a result could not make good on the massive sum of *f*126,964 which he owed to the company as payment for pepper purchased from the chambers Amsterdam and Zeeland. As was usual in this period, the Amsterdam Aldermen dealt with the bankruptcy and adjudicated the claims made by creditors, including the VOC.[104] The VOC received a sentence in their favour on 13 July 1618: Quinget's shares could be sold off to make good his massive debt to the company. According to the Company, Quinget's shares were as follows: *f*3,000 in chamber Amsterdam; *f*3,000 in chamber Rotterdam; *f*39,000 in chamber Hoorn; *f*2,100 in chamber Enkhuizen. This amounted to *f*47,100. But that would not have covered even half of what he owed the company.[105]

As had happened in the Court of Holland, the High Court passed a sentence in favour of the Dutch East India Company. Bartolotti *et al* were denied their claim to the *f*39,000 of shares in the Hoorn chamber, the dividends that would have gone along with that as well as the years of interest for which they sued the company. Furthermore, they had to pay a fine for submitting a groundless appeal.

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[101] It is likely that Anthonij van Surck was related to Susanna van Surck who was the mother-in-law of Jan Baptista Bartolotti, older half-brother of Guillielmo Bartolotti II. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *747* (1655) Geextendeerde sententie. The sentence mentions the Court of Brabant in Brussels. On the history of the Court of Brabant, which moved to The Hague, and in which both the High Court and States General interfered in proceedings, see Broers and Jacobs, *Staatse Raad van Brabant* esp. 9-11.

[102] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *747* (1655), Geextendeerde sententie.

[103] Zuydewijn, *Van koopman tot icoon*, 276. Johan van der Veken featured in Chapter 2 as the man from Mechelen who emigrated to Rotterdam where he blossomed from herring merchant into a man of wealth and influence with global trade interests. He married Caspar Quinget's half sister, Johanna. Johanna was the daughter of Christoffel Quinget and his second wife, Catharina Ruts. Kernkamp, *Johan van der Veken* 27.

[104] The Amsterdam Aldermen dealt with all bankruptcy cases in the period before the creation of the Insolvency Chamber (*Desolate boedelskamer*), which was set up in late 1643. As the city of Amsterdam grew, so did the Aldermen's case load. The Insolvency Chamber as well as the commissioners for insurance matters (1598), and chambers of minor matters (1611), and maritime cases (1641) were intended to reduce the Alderman's workload in an effort to provide swift justice. Moll, *De desolate boedelskamer*, 16-18.

[105] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *747* (1655) Geextendeerde sententie; inv. nr. *651* (1655) Resolutie, scan 93.

The initial investment

Anthonij van Surck was one of the foreigners who invested in the VOC when it was established in 1602. The Antwerp merchant invested 7,000 Flemish Pounds (*f*42,000) in the Hoorn chamber via a family member, Caspar Quinget, resident in the Republic.[106] Antwerp had fallen to the Spanish in 1585 and was at the time of the creation of the VOC, 'enemy territory'. Involvement in the Northern Netherlands expansion was, from a Southern point of view, forbidden.[107] In order not to risk life and limb, van Surck did not invest in the VOC in his own name, rather he paid a sum to his nephew, Caspar Quinget. Caspar (or Jaspar) was of Southern Netherlands background. He was one of five sons born to a textile merchant in Antwerp. When they reached their majority, the five Quinget brothers spread out across Europe to conduct trade. After living in Middelburg for a while, Caspar moved to Amsterdam in the 1590s.[108] There he was involved in grain trade to Italy and was an investor in voyages to Asia and then the VOC. When the VOC was created, he invested in the chambers of Amsterdam, Rotterdam, Hoorn, and Enkhuizen.[109]

Having invested a significant sum on behalf of his uncle, on 7 May 1606 Quinget gave van Surck a receipt (*recognitie*) along with which he promised to defend van Surck's rights to the shares in question. At this point they must still have been registered under Quinget's name in the chamber's account books. Van Surck and Quinget had their own strategy for keeping track of their transactions, one of which they had also used for their investments in the *voorcompagnieën*: van Surck's accounts were recorded under the name Jan Baptista Quirengi and instead of specifying 'East Indies' they agreed upon something else – one possibility was 'Moscovy' which they would both understand to be code for investments in the trade with Asia.[110] Their efforts at secrecy and van Surck's concern for his safety may not have been overstated: not only was it forbidden to invest in the Republic, but a story circulated of an Antwerp merchant who, when it came to light that he held shares in the VOC, had been sentenced to death. He was reprieved: his sentence was downgraded to life imprisonment.[111]

The amount van Surck chose to invest in the Hoorn chamber warrants closer inspection. The total capital invested in the Hoorn chamber was *f*266.868 which means

[106] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *747* (1655), Geextendeerde sententie.
[107] E. Stols, "De Zuidelijke Nederlanden en de oprichting van de Oost- en Westindische Compagnieën," *BMGN* 88, no. 1 (1973): 12-13.
[108] Gelderblom, *Zuid-Nederlandse kooplieden*, 75. His eldest brother, Nicolaes, went to Rouen in France; Christoffel de jonge and Melchior were trading in Venice by around 1590; Balthasar was trading in Hamburg by 1592, and Caspar was in Middelburg at that time. He moved to Amsterdam in 1596. Before Caspar moved to Amsterdam the family was represented there by their brother-in-law, Antwerp merchant Franchois van Hove.
[109] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *747 (1655) Geextendeerde sententie.* Noteworthy among these was Quinget's investment in the VOC Chamber Amsterdam which amounted to *f*45,000 and was done on behalf of 'some friends'. Dillen, *Aandeelhoudersregister*, 41-42.
[110] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *747* (1655), Geextendeerde sententie.
[111] Dillen, *Aandeelhoudersregister*, 42. Stols also mentions fines totalling 600,000 ducats which were imposed on investors in Holland-based firms in 1600-1. Stols, "De Zuidelijke Nederlanden en de oprichting van de Oost- en Westindische Compagnieën," 12.

that van Surck's investment via his nephew comprised approximately one-sixth of the total capital invested in the chamber in 1602.[112]

At some point in the following years – the date is not specified in the sentence – van Surck instructed that *f*3,000 of his investment be transferred into Cornelis Pieterssen Hooft's name. The payment for this transaction was received by van Surck's son, Eduard. The men decided that the remaining investment – *f*39,000 – be deducted from Quinget's accounts in the Chamber of Hoorn's books so that it would be clear that the investment was in fact someone else's. In order not to remain anonymous, they used a system of initials, GBQ, which must have referred to the alias Giovanni Baptista Quirengi. How this lined up with Quinget's bankruptcy, which is addressed below, is unclear, but may have been the motivation behind the apparently sudden need for clarity. In 1621 Anthonij van Surck transferred his rights to his son Emanuel, but it seems this was not formalised according to the company's procedures for transfer of ownership of shares in the chamber accounts. Emanuel van Surck was indebted to the Bartolottis, owing them a large sum of money. According to the Bartolottis, this loan was secured with the Hoorn shares.[113] The court records do not specify whether or how this agreement was formalised, but the shares were not transferred into the Bartolottis' names in the chamber accounts. After Anthonij van Surck's death, the Council of Brabant ruled that the curators of his insolvent estate cede all goods, shares and credits to the creditors, including the Bartolottis. But as the Bartolottis saw it, the VOC refused to comply with the court's ruling by refusing to recognise the Bartolottis as the owners of the *f*39,000 shares in the Hoorn chamber.[114] The Bartolottis thus felt it necessary to pursue their claim in court.

Bankruptcy

The VOC countered Bartolotti *et al*'s claim to the shares which had first been invested by Anthonij van Surck by not recognising that they had ever belonged to him in the first place. The company's case was based on the fact that Caspar Quinget had been the legal owner of the shares as recorded in their books. When Quinget went bankrupt the VOC seized his shares in lieu of debt repayment.[115]

Caspar Quinget had commanded vast sums of money – his investment in the Amsterdam Chamber of *f*45,000 was mostly his own; he held the largest accounts in the Amsterdam Stock Exchange (*Wisselbank*) after it was opened in 1609.[116] But in 1617 he went bankrupt. What could have been a very lucrative deal turned into Quinget's downfall: Quinget was approached by the Venetian consul (*resident*) in The Hague,

[112] Gaastra, *The Dutch East India Company*, 26 (Table 23).

[113] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *747 (1655) Geextendeerde sententie.* The sentence states that in addition to other transporten, Emanuel specifically transferred the shares and rights he had received from his father in 1621, against Quinget.

[114] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *747 (1655) Geextendeerde sententie.*

[115] Bankruptcy is a formal, legal concept which denotes the process which begins with the official declaration of inability to pay creditors. This arises out of an informal situation of insolvency. See Thomas Max Safley, "Introduction," in *The History of Bankruptcy: Economic, social and cultural implications in early modern Europe*, ed. Thomas Max Safley (London and New York: Routledge, 2013), 3.

[116] Dillen, *Aandeelhoudersregister*, 55.

Christoforro Suriano, to extend credit to the Republic of Venice to hire ships and recruit troops. According to Johannes Gerard van Dillen, "These apparently so lucrative transactions actually brought ruin upon him!"[117] As a result of this, Quinget was declared bankrupt in December 1617, which led to more bankruptcies and contributed to the shrinking credit and scarcity of money in Amsterdam in early 1618.[118]

According to Goswin Moll, bankruptcies in Amsterdam were dealt with in accordance with Antwerp custom in this period. Creditors informed the authorities that someone was insolvent, and thus bankruptcy ensued.[119] Those who believed themselves to have preferential claims had three months to make those claims known to the secretary. Following that period, there was a public call for creditors to make their claims known to the secretary in the subsequent six weeks. In some cases, public calls were not necessary, but when shares in ships or in companies were involved, as in Quinget's bankruptcy, such a public call to creditors was made.[120] When Quinget went bankrupt, curators were appointed over his assets (*boedel*) against which the VOC made a claim in the Amsterdam City Court (*Gerechte van Amsterdam*). The company claimed payment of a huge sum of money owed it for the purchase of pepper from the Chambers Amsterdam and Zeeland. According to the Company, Quinget had purchased a 'large quantity' of pepper, valued at *f*126,964-9-0. But he had not paid the company for the purchase. The company claimed in court that Quinget's shares be made subject to seizure in lieu of payment. Goswin Moll suggests that bankruptcies were dealt with in Amsterdam in accordance with Antwerp customs, which in this case would have required a public call for creditors to make their claims known to the secretary, specifically because shares in a company were part of the estate. The way that the VOC dealt with the bankruptcy fits with the pattern that Jeroen Puttevils identified in Antwerp court records from the sixteenth century, namely the shift from seizing the debtor to seizing his goods.[121] The company reason was based on its charter: investors' signatures were their promise of fulfilling the subscribed sum in three instalments, with which each one pledged his person and goods as surety with the condition that their shares and dividends would be held as collateral against any purchases of spices or other company goods which had been made. The company claimed that this would be implemented notwithstanding any transfers of shares which had been done before the date of purchase, unless those shares had been transferred in the company books, by the bookkeeper, in the presence of director-witnesses.[122] The Amsterdam Court awarded the VOC on 13 July 1618. Quinget's shares

[117] Original: "*Deze schijnbare zo voordeelige transacties hebben hem echter in het verderf gestort!*" Ibid., 66.
[118] Ibid. Quinget's bankruptcy broke the chains of credit, evidence of the "centrifugal force" of business failure which Safley mentions. Safley, "Introduction," 10.
[119] Thomas Safley defines bankruptcy as the formal legal proceedings which arise out of insolvency. Safley, "Introduction," 3.
[120] Moll, *De desolate boedelskamer*, 2, 12-13.
[121] Jeroen Puttevils, "See you in court! The role of the local and central courts as mercantile contract enforcers in sixteenth-century Antwerp," in *European Association for Urban History Conference* (Prague, Czech Republic: Unpublished conference paper, 2012), 29.
[122] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *747* (1655), Geextendeerde sententie. The sentence does not record reference to a specific article. The charter provisions on sale of commodities are addressed in more detail in Chapter 6.

valued at *f*47,100 across the different chambers were insufficient to cover his debt, but were sold by the company and transfer of ownership was completed in the respective chamber account books.[123]

The High Court's final decision

Eleven years after permission was granted to Maria Thibault to appeal the Court of Holland's verdict which went against her, the High Court pronounced a sentence. Once again, it did not go in the favour of those suing the Company. Like the Court of Holland before it, the High Court denied the claim to shares which Bartolotti *et al* had made – that is Bartolotti and fellow heirs were denied their claim to be recognised as shareholders in the Hoorn chamber which they had based on the complex transfer of shares amongst family members, creditors, and through inheritance. The court declared that Bartolotti *et al* had not been aggrieved by the provincial court's decision and that their appeal was thus baseless. In consequence, they were sentenced to pay the fine for a baseless appeal (*boete van fol appel*) as well as for two requests (*requesten civile*) which had been rejected. On top of this, they were sentenced to pay the legal fees.[124] Their persistent efforts to acquire shares in the Hoorn chamber and the attendant dividend and interest payments came to naught.

A family portrait

There are three contexts in which the significance of this case can be understood. Firstly, the shareholder discontent of the 1620s was the backdrop to the opening phases of the legal battle between the Bartolottis and the VOC Chamber Hoorn. Shares in the chambers, and especially of such magnitude in a small chamber, were the way in to holding positions of power in the company, or at least having a say in who took up those positions. The sum of *f*39,000 would have been sufficient to qualify the owner as a major shareholder in the chamber, which position, after 1623, brought possibilities to have insight into company finances, to have an advisory vote in the Gentlemen Seventeen's meetings and special commissions, and to participate in the nomination of candidates for vacant directorships.[125] Femme Gaastra notes that a particular evil of this last opportunity, was that as soon as a director's seat became available, directors moved shares around to their contacts or supporters with the aim of creating new major shareholders and thus changing the make up of the voting boards.[126] Following from the fact that *f*3,000 was the threshold above which to become a major shareholder, the shares at stake in the Bartolotti case could have been used to qualify 13 major shareholders. Perhaps the Bartolotti family's claim to shares in the Hoorn chamber was about capturing the opportunity to influence the chamber, and via that means to attain a position of power in the company. The context of shareholder discontent and the changes that were

[123] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *747* (1655), Geextendeerde sententie.
[124] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *747* (1655), Geextendeerde sententie.
[125] Gaastra, *Bewind en beleid*, 26-27.
[126] Ibid., 27.

introduced in 1623 thus provide an important angle for interpreting what the case may have been about, other than the monetary value of the shares.

Secondly, bookkeeping practices in the chambers play an important role in this case because the chamber books were the only legal proof of ownership of shares in the absence of share papers. The Bartolotti family went to great lengths to show that they had followed company procedures and explain the grounds of their claim to their shares via the various transfers.

Thirdly, there is the matter of the bankruptcy. While the case does not illuminate much about the bankruptcy proceedings – whether the company claimed it was a preferential creditor or not, whether they tried to recover the rest of the outstanding debt – we see very clearly the way that the company dealt with outstanding debts. Shares in the company were held as collateral, not only for directors as the charter set out, but also for those who purchased spices. This is clear in the Quinget bankruptcy case as well as in the first case discussed in the chapter, involving the two English merchants and the Zeeland Chamber. These issues were of great significance to the development of the secondary market. How would the court deal with claims on shares which had been sold by the company and transferred to new owners in the chamber books, as permitted by a court sentence in a bankruptcy case? Securing the rights of shareholders through clear legal principles underpinning ownership and transfer of ownership was crucial to the growth of the secondary market as Petram has shown. The Bartolotti case reinforced the principle that outstanding claims to shares in the chambers did not endanger ownership of shares which had been purchased and transferred in the company accounts. But as the court's ruling in the van Hatting case showed, the court did acknowledge the role of human error which should be corrected.

The case between the Bartolottis and the VOC chamber Hoorn is a way into understanding more about how that Chamber dealt with its shareholders in the period in which Lodewijk Petram has identified as one of testing the boundaries of the legal framework. In the dispute between the Bartolottis and the chamber, numerous individuals were involved in the sale and transfer of shares between them, which transactions were complicated by Quinget's purchase of spices from the chambers Amsterdam and Zeeland, and the claims made against his insolvent estate. Petram identified ownership and transfer of ownership, endorsement, and terms of settlement as the underlying legal principles which were clarified and refined in the sentences of the Court of Holland, in cases between shareholders. In the case between the Bartolottis and the chamber questions of ownership were at stake, complicated by claims made on the shares arising out of bankruptcy. The underlying question was whether or not debt repayment had prioirity over heirs' claims. We cannot overlook the fact that the shares in the chamber were very valuable, and in one of the smaller, peripheral chambers would have afforded more potential influence than the same sum in the Amsterdam chamber.

As has been shown, the Bartolotti family was involved in many branches of trade and established themselves as one of the foremost trading houses in Amsterdam in the first half of the seventeenth century. Like other men who featured in this chapter, the Bartolottis did not limit their commercial interests to one sphere; they had diverse

interests in trade in the Mediterranean, Baltic, Atlantic and Indian Oceans. Generations of the family invested in both the VOC and the WIC. They were also very well-connected politically: their 'Italian' connections were strong, as were their ties to the Amsterdam political and commercial elite through solicitous marriages. The Bartolotti family showed great perseverance in pursuing litigation against the company in multiple courts over a period of decades. The case lays bare the complexity of investment in the VOC in the early years of the seventeenth century and how that translated into litigation after a series of transfers through sale, inheritance and bankruptcy proceedings. The central question in the case was who owned the shares, and who would be recognised as the legal owner of the asset, with all the dividend payments that would come with that.

In their verdict, the High Court decided that the Bartolottis were not the rightful owners of the shares in the Hoorn Chamber. The court's sentence is not clear who exactly the judges believed the owners to be. The sentence underpinned the VOC's policy of only recognising ownership of shares which were recorded in the chamber books and transferred according to the company regulations. In this way the judges secured the company's administration as the foundation of share ownership.

Conclusion

The four cases discussed in this chapter bring to light another type of conflict which arose out of the financial and corporate innovations of the early modern Dutch Republic, and Amsterdam in particular. Ownership of shares – the claim to be recognised as owner in the company books and dispose of shares – was disputed in the High Court. The cases here arose out of one or a combination of circumstances, namely debt, bankruptcy, inheritance, and share transfers. These cases add another layer to our understanding of the financial markets in Amsterdam and beyond. The development and growth of secondary markets for VOC and WIC shares was predicated on contract enforcement mechanisms. Buying and selling of shares, forwards, and futures spawned lawsuits between traders who wanted to establish the outer limits of the legal framework. These cases show that ownership of shares was also a matter which led to legal disputes between shareholders and the chamber directors themselves.

The ownership disputes which were heard in the High Court did not follow the trajectory of cases from lower to higher courts set out in the Introduction, that is from the city courts, to the provincial court and finally to the High Court. This can be attributed to the standing of the litigants who pursued suits and the competence of the High Court to deal with property matters in first instance. In the first court case, the dispute over share ownership in the Zeeland Chamber began in the Middelburg court, where English merchant, Laleij, received a verdict in his favour. The Chamber directors appealed the sentence of the Middelburg court, not in the Court of Holland, but in the High Court. Bypassing the provincial court in appeal cases is something which the VOC also did in

other cases.[127] The men involved in the other three cases were all of high standing in political and/or commercial circles. The cases between van Hatting and Coninck and the directors of the Chamber Zeeland began in the Court of Holland and were appealed in the High Court. The men involved were civic office holders: van Hatting was a former burgomaster and councillor in Utrecht; Coninck was bailiff and council member of Veere in Zeeland, and a VOC director at the time of the dispute. Perhaps the fact that the men were from different cities located in different provincial jurisdictions, meant that a city court was not the logical place to begin proceedings. Furthermore, their position as civic office holders might have been the key to access to the Provincial Court, in The Hague from whence the cases progressed to the High Court.

The litigants in the other two cases were families with immigrant backgrounds, but who would not have been considered foreigners. The executors of David de Pinto's will wrested control of shares away from the chamber through legal proceedings which began and ended in the High Court. Of the de Pinto family, H. P. Salomon comments that after their move from Antwerp to the Republic in the seventeenth century, they became "one of the most noted families" of the Portuguese Nation in Holland, a position which they retained deep into the 1800s.[128] Their immigrant roots did not translate into being foreign – the Nation were subjects of the States General, as had been clarified through negotiations over subjection and citizenship in the early decades of the seventeenth century. But these people did have Southern Netherlands connections, having moved from Antwerp to Holland in the mid-seventeenth century.[129]

The Bartolottis were also of immigrant background, but, as shown earlier, were less Italian than their name suggested. The family, originally named van den Heuvel, was of Northern Netherlands origin, had immigrated to other parts of Europe, and then moved to the Republic. The family's ties in marriage and commerce were strong, linking them to Antwerp and to Italian merchants. I suggested here that the family's long-running dispute with the Hoorn chamber directors over ownership of shares in that chamber can be interpreted beyond just a claim for financial gain. I made the connection to the shareholder protests and the changes brought in to the corporate governance of the VOC in the 1620s. With that background in mind, it is possible that what the Bartolotti family was indeed after was greater influence within the VOC.

This chapter has shed light on investment in the VOC chambers by foreigners – Owens and Laleij – and men resident outside of the Republic – Guillielmo Bartolotti and Anthonij van Surck. Van Surck's investment strategy in particular is intriguing: the court records provide a window onto both how he invested and when, and the (alleged) subsequent transactions. His was not the only business which was laid bare in the case – Quinget played a very important role in the initial investment as well as in the claims that were made in the legal dispute between the chamber directors and the Bartolottis. That he went bankrupt was an important factor, and in particular was part of explaining why

[127] For instance, the VOC Chamber Zeeland bypassed the provincial court in the two cases against the heirs of Jan Maertens. These are discussed in Chapter 6.
[128] Salomon, "'De Pinto' Manuscript," 6-7.
[129] Ibid., 6.

the company took the court sanctioned action that it did, namely, selling his shares to cover his debts.

Three of the four cases here involved chambers other than Amsterdam. While there is no doubt Amsterdam was the economic heart of the Republic, a hub of world trade, the focus on chambers outside of that commercial centre is a useful reminder of the wider context of shareholding and secondary markets. But what did it mean to sue chamber directors rather than the Gentlemen Seventeen? Litigation over shares named VOC chamber directors as the parties. Each chamber was responsible for its own administration, from equipping and manning ships to selling off the return cargo. Capital was invested at the level of chambers which resulted in six capital stocks, and six secondary markets for the shares which represented those investments. The federalised structure of the company explains why it was chamber directors who were summoned to court in share-related cases. Chapter 4 which dealt with wage claims demonstrated this same pattern of suing chamber directors rather than the company directors. The following chapter which deals with property rights disputes shows the same pattern. That Chamber directors were sued rather than the company as a whole, represented by the board of the directors, the Gentlemen Seventeen, has implications for how the legal personality of the company is conceived.

What has come to light, is that litigation over share ownership in the High Court was a distinctly VOC problem. WIC chamber directors did not face proceedings of this kind, in the High Court. The reason cannot be found in differences in transferability of shares, but rather in the nature of the secondary markets for these shares. The WIC struggled to attract investors when the company was first created and was beset with financial trouble throughout its existence. It stands to reason that secondary markets for WIC shares, while they did exist, were not as dynamic as secondary markets for VOC shares, even those markets outside Amsterdam. This is likely part of the explanation for the lack of share ownership cases against the WIC chamber directors. Another important factor was likely the different underlying reasons for owning shares in the two companies. WIC shareholding could bring access to Atlantic trade. This could have had the consequence that men invested in the company in order to take part in Atlantic trade, rather than for the shares as tradable assets in their own right.[130]

Disputes over the ownership of shares were not a challenge to the VOC monopolies, or what the company did in terms of trade and commerce, or visions of empire. These were fights about involvement in the companies in financial terms – having a stake in the companies and profiting from that involvement through dividend payouts. The following chapter picks up another area of conflict, namely property rights disputes rooted in the sale of goods which originated in the charter areas of the VOC and the WIC and had been shipped to the Republic by the companies, private traders, and privateers.

[130] This follows Petram's argument regarding the shift in attitudes to VOC shares, in the 1630s and 1640s. Petram, "The world's first stock exchange," 36.

6. Property rights and colonial imports

Conflicts arising from buying, selling and seizing merchandise

Spices, tea and coffee, textiles, sugar, ivory, and gold were amongst the valuable goods which were shipped to the Republic from within the charter areas of the Dutch East and West India Companies. These colonial imports were important sources of revenue for the companies in the Republic.[1] Not only did colonial goods pervade the homes and adorn the bodies of the Republic's elite as was deftly captured in the great masterpieces of the Golden Age, but such goods were also re-exported to cities across Europe.[2] Moreover, colonial imports sold in the Republic linked the trades in the Indian and Atlantic Oceans. Textiles, saltpetre and cowries imported from Asia were crucial links in the commodity chains which saw goods bartered on the African coast for human cargo who were sold in the Americas.[3] Following the opposite direction, gold and silver from Africa and the Americas, and taken prize off foreign vessels, was needed in Asia by the VOC to take part in markets where there was little to no demand for European goods.[4]

Colonial imports were one category of goods among many which were traded in the Dutch economy of the early modern period. Having taken over from Antwerp, by the beginning of the seventeenth century Amsterdam functioned as the staple market for the Dutch Republic as well as Europe.[5] Over the course of the late sixteenth century until the 1660s, the Dutch Republic "grew quickly in strength, dominated the economy of Europe, and constructed a trading empire that spanned much of the world. This was its Golden Age."[6] Jan de Vries and Ad van der Woude argue that increasing capital investment in the staple market – that is acquiring, storing and selling goods – drove growth in trade. Trade

[1] Fatah-Black and Windt, "De architecten," 1, 4-5.

[2] The Rijksmuseum's 2015-2016 exhibition Amsterdam > Asia addressed the representation of goods from Asia in portraiture and still life paintings, among other pertinent themes. Karina H. Corrigan et al., eds., *Asia in Amsterdam: The culture of luxury in the Golden Age* (New Haven and London: Yale University Press, 2015). On luxury goods from Asia see Maxine Berg, "Britain's Asian Century: Porcelain and global history in the long eighteenth century," in *The Birth of Modern Europe: Culture and economy, 1400-1800. Essays in honor of Jan de Vries*, ed. Laura Cruz and Joel Mokyr (Leiden and Boston: Brill, 2010). Berg et al., *Goods from the East*. On the role of Amsterdam as a staple market, or entrepôt, see Gelderblom, *Zuid-Nederlandse kooplieden*. On the gateway model: Clé Lesger, *The Rise of the Amsterdam Market and Information Exchange: Merchants, commercial expansion and change in the spatial economy of the Low Countries c. 1550-1630*, trans. J. C. Grayson (Aldershot: Ashgate, 2006), esp. Chapter Five.

[3] On textiles and saltpetre see Fatah-Black and Windt, "De architecten," 1, 12-16. According to Glamann, cowries were one of the products brought to the Republic by the VOC and sold to the West India Companies for use in purchasing enslaved people on the West Coast of Africa. K. Glamann, *Dutch-Asiatic Trade, 1620-1740* ('S-Gravenhage: Martinus Nijhoff, 1981), 22.

[4] The VOC exported silver from Europe to Asia to use there but over time allowed company servants to remit fortunes and thereby could reduce the exports of silver from Europe while still increasing their trade in Asia. Nierstrasz, *Rivalry for Trade*, 31-35, 39-42.

[5] On the rise of Amsterdam to prominence see Lesger, *The rise of the Amsterdam market*; Vries and Woude, *The First Modern Economy*; Israel, *Dutch Primacy in World Trade, 1585-1740*; Gelderblom, *Zuid-Nederlandse kooplieden*.

[6] Vries and Woude, *The First Modern Economy*, 668.

capital was generated from profit of trade conducted from the Republic, with the addition of some external injections from immigrants to the Dutch Republic. This had a self-reinforcing element: according to de Vries and van der Woude, as the volume of capital increased, so institutions which supported trade became increasingly efficient; technological advances improved shipping; and merchants became more specialized. The effect was to lower transaction costs, which drew more trade and more merchants to the Republic. Famously, de Vries and van der Woude have argued that the Dutch economy of this period was the first modern economy.[7]

One of the necessary, extant features which leads de Vries and van der Woude to call the Dutch economy modern, was "a state which in its policy making and enforcement is attentive to property rights, to freedom of movement and contract, and at the same time is not indifferent to the material conditions of life of most inhabitants."[8] In what ways was the Dutch state attentive to property rights? Certainly, the legal institutions in the Republic dealt with questions of property rights which arose in the commercial sector. For the VOC and WIC, property rights disputes come to the fore in issues related to buying, selling and profiting from colonial imports.

This chapter shows that the institution of the High Court, in its judgments, protected property rights. More or less consistently, the court's sentences limited the extractive or predatory tendencies, in the Northian sense, of the VOC and the WIC. Douglass North and Barry Weingast talk about those qualities in reference to rulers, and in particular to the English Crown. Insecure property rights characterised the economic landscape of early seventeenth-century England. North and Weingast argue that after the Glorious Revolution of 1688, property rights were secured in England as the power of parliament and the new monarchy was balanced so as to limit predatory expropriation of private wealth by either side. This amounted to credible commitment – that institutions, crucially an increasingly independent judiciary, could hold the monarchy to make good on its pledges, in particular debt repayment.[9] Research on the Dutch Republic indicates that property rights were more secure from an earlier period there. Jan de Vries and Ad van der Woude indicated that this was the case, noting the importance of a state "attendant to property rights" as mentioned earlier.[10] Recently, Guiseppe Dari-Mattiacci *et al* argue that the corporate form which the VOC took – with permanent capital – could only emerge under certain conditions. One of these was secure property rights, which the authors express as a low risk of public predation on private wealth ensured by the appropriate political institutions. The VOC's initial capital investment had a ten-year maturity, but the accounts were not closed at the end of that term. For the welfare of

[7] Ibid., 669-670.

[8] Ibid., 693. The other three features that they list were "markets...which are reasonably free and pervasive; agricultural productivity adequate to support a complex social and occupational structure that makes possible a far-reaching division of labor; ... and a level of technology and organization capable of sustained development and of supporting a material culture of sufficient variety to sustain market-oriented consumer behavior."

[9] Douglass C. North and Barry R. Weingast, "Constitutions and Commitment: The evolution of institutions governing public choice in seventeenth-century England," *Journal of Economic History* 49, no. 4 (1989). See also North, "Institutions."

[10] Vries and Woude, *The First Modern Economy*, 693.

country and reasons of state amongst other considerations, the States General paved the way for the company capital to become permanent in 1612. The authors contend that in a context of vulnerable property rights, this development would have been impossible.[11] VOC share trading is not the focus of this chapter; property rights in the context of colonial imports is the topic under discussion. Here, the companies, the VOC and the WIC, were the ones whose extractive tendencies were reigned in as merchants and merchants' heirs used the court to assert their rights of ownership over goods or the proceeds from the sale of goods. While in their charter areas the companies were both ruler and judge, to a greater or lesser extent in different places, in the Republic they submitted to the court's pronouncements. In cases regarding property rights related to buying and selling, seizing and profiting from colonial goods, the High Court secured the rights of individual merchants and heirs, against company predation.

In this chapter I focus on the wholesale market, that is, the sales by contract, or auction, from the chambers of the VOC and WIC. The retail market is not addressed, but admittedly, is a topic that requires further research. As Jaap van der Veen has pointed out, so little research has been directed to the shops in Amsterdam where buyers, including foreigners, could peruse and purchase exotic goods and curiosities imported from Asia by the VOC and its employees.[12] At least some of the goods for sale in the Warmoesstraat and Pijlsteeg where the shops were concentrated, had their origins in illegal private trade by company employees, which trade is addressed in Chapter 3.[13] The conflicts that arose from retail of colonial imports would not have included the companies' directors as litigants and so are beyond the scope of this study.[14]

Like the wage cases and share cases of the preceding chapters, the cases in this chapter were brought against chamber directors. This should not be a surprise considering that, in the federalised structure of the two companies, the sale of return goods was organised at chamber level. As in the previous cases in which the directors of a specific chamber were sued, the limited liability set out in the founding charters protected their personal assets.[15] The chamber directors were not referred to individually by name; the directors of a chamber as a collective were named as the party. In this way the directors represented the chamber in legal proceedings.

The property rights disputes which follow progressed through the legal system in interesting ways. Firstly, cases which were heard in the Insolvency Chamber in Middelburg were appealed first in the city court there, of which the Insolvency Chamber was a subsidiary court, and then directly in the High Court. This happened in both cases

[11] Dari-Mattiacci et al., "Corporate Form," 195-197, 211.
[12] Jaap van der Veen, "East Indies shops in Amsterdam," in *Asia in Amsterdam: The culture of luxury in the Golden Age*, ed. Karina H. Corrigan, et al. (New Haven and London: Yale University Press, 2015), 137-138.
[13] Ibid., 137-139.
[14] There are examples of conflicts between merchants over goods which had been purchased from the companies, but such conflicts were one step removed from sales by the company chambers themselves. See for instance the case which revolved around imported coffee which had been bought from the VOC chamber Amsterdam in 1748.NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *848* (1757), Geextendeerde sententie, scans 85-106. The litigants were merchants Garisson and Ruijsch.
[15] VOC charter 1602 article 42 in Witteveen, *Een onderneming*, 96. WIC charter 1621 article 36 in Laet, *Iaerlijck Verhael*, 19. One cannot help but notice the similar wording in these two articles.

related to the same estate. It was the VOC which bypassed the Provincial Court when appealing the verdict of the city court. The WIC did the same in a case which had also started in Middelburg. The company directors appealed the city court's verdict in the High Court. But as the final case in the chapter shows, it was not only the companies which bypassed the Court of Holland against the principle of *omisso medio*; foreign merchants who sued the WIC did also, at least in one case. It was perhaps their foreignness which allowed them to do this, considering that the High Court was accessible to foreign merchants in first instance. How cases made their way to the High Court, and how the court sentenced property rights disputes, will be addressed in the rest of the chapter.

The first section of this chapter provides an overview of the market for colonial imports in the Republic as envisioned in the founding charters of the VOC and WIC. The VOC's charter set out the relationship between the company's five chambers but did not include detailed instructions regarding buyers and modes of sale. In response to VOC shareholders' protests, in part at least against the way that the company's directors were dominating the market for return goods, the WIC's charter prohibited directors from buying up goods shipped from within that company's charter area. That regulation did not, however, last very long.

The rest of the chapter is devoted to addressing the issue of property rights, and how merchants, shipowners, and heirs took the VOC and WIC to court in attempts to protect their perceived rights. Importantly, the litigants encompassed subjects of the States General as well as foreigners. Certainly, the cases they pursued to the High Court touched on a multiplicity of issues; I have chosen to draw out the matter of property rights in conflicts which were related to the sale or purchase of goods from the chambers of the two companies. The cases deal with three different points at which property rights were perceived to be under threat – in the acquisition of goods; the claims to property in bankruptcies; and transacting goods. I have grouped the cases which follow accordingly. The consistency of High Court sentences in protecting property rights shows that the seventeenth century was a period over the course of which there was more and more clarity regarding 'the rules of the game'.

The charters, chambers and modes of sale

This section answers two basic questions regarding the market in the Republic for goods imported by the Dutch East and West India Companies. Firstly, who was allowed to buy return goods? And how were the goods sold? These questions are answered based on the founding charters of the two companies and it will be shown that as regards the purchasers, there was a fundamental difference between the two companies in the configuration of the relationship between directors and the home market. Explanations will be given for this difference at the inception of the WIC and some consequences of it will be suggested.

VOC

The VOC's founding charter dealt very little with the home market. The company's charter granted it no special privileges or control over the market for goods in the Republic. In fact, how the company should go about selling the return cargoes was not detailed in the charter. More of a concern in the charter was establishing the way the chambers would deal with each other, to ensure an even distribution of products. Thus Article 13 stated that should one chamber receive spices or other goods of which other chambers had none, the chamber should fulfil the others' requests for goods as far as possible, and then send more goods if the chambers sold out of the products in question.[16] This indicates that each chamber was responsible for the sale of return cargo received, and could act independently of the other chambers in this regard. The charter did not, however, deal with how the goods each chamber received should be sold nor did it address the pertinent matter of who could purchase goods from the company.

Price and manner of sale must have been discussed in the meetings of the Gentlemen Seventeen, as a secret resolution which accompanied the 1602 charter indicates. In spite of the provision which Article 13 made for an even distribution of goods between the chambers, the secret resolution set out a different relationship between the chambers of Amsterdam and Enkhuizen. The directors of the Enkhuizen chamber would allow their spices and goods to be sent to the directors of the Amsterdam Chamber "in order to be sold by the same in whatever manner and for whatever price had been set by the Gentlemen Seventeen." The proceeds of the sale would then be given to the Enkhuizen directors.[17] Firstly, this may well have led to market concentration in Amsterdam, especially considering that other chambers in Holland may have followed this practice. Secondly, the statement reveals that it was the Gentlemen Seventeen who set the price of goods in the Republic. Price was not determined by the market; company directors set the prices of return goods. Despite the charter's silence on the matter, this statement points to chamber-wide policies in pricing.

The absence of any regulation regarding who could purchase goods from the company is the most important element of the founding charter of the VOC as regards the market for colonial imports in the Republic. The protests that arose from shareholders in response to directors dominating the market (discussed in Chapter 5) resulted in a different approach in the WIC's 1621 charter.

[16] Article 13 (1602) in Witteveen, *Een onderneming*, 89.

[17] Original: "*om by denselven vercocht te werdden op alsulcken voet ende tot alsulcken prijs, als by het collegie van de Seventiene... sal werdden genomen*." Japikse and Rijperman, *Resolutiën*, XII:297-298 (quote 297). That chambers sold off goods on behalf of other chambers also took place in the eighteenth-century. Middelburg auction records show that the Chamber Zeeland sometimes sold goods for the Chambers Amsterdam, Hoorn and Enkhuizen. A possible explanation for this was safety and security of goods during times of conflict – rather than transporting goods to another chamber, they were sold where they arrived for convenience. Fatah-Black and Windt, "De architecten," 6.

WIC

In contrast to the VOC's charter, the WIC's founding charter of 1621 categorically excluded directors from purchasing any of the goods brought back to the Republic. It stated: "neither shall the Directors purchase, or have purchased [on their behalf], any merchandise or goods from the Company, directly or indirectly, having no portion or part therein."[18] Following the statement was the punishment set out for directors found in contravention of the article: one year's worth of the director's commission (*provisie*) would be confiscated and given to the poor and in addition, the recalcitrant director had to vacate his position.[19] Considering the timing, this must have been a reaction to the protests by VOC shareholders at the time.

The exclusion of WIC directors from the purchase of return cargoes may have been a contributing factor to the difficulties which the WIC faced in establishing the scope of its charter and attracting sufficient investment. It essentially forced a choice between profiting from Atlantic trade as a company director or as an individual involved in the home market, a choice which those who invested in the VOC were not forced to make.

Two years after the chartering of the WIC company directors' involvement in the market for return goods was reconfigured, in an agreement signed between the WIC directors and major shareholders (*hoofdparticipanten*) in June 1623, and approved by the States General. The fourth point of the agreement referred to charter Article 31, specifying that the directors would be subject to the prohibition against buying and selling for the period of two years.[20] No explanation was given in the document for limiting the period of the prohibition. But we can surmise that pressure from directors to allow them access to the market for company imports and/or making the position of director more attractive to potential investors was likely part of it.

Modes of sale

Neither the VOC nor the WIC founding charters set out regulations regarding the mode of sale which the chambers should employ in the Republic. Auctions have come to dominate the view of how the companies sold the goods which were shipped to the Republic. Sale by contract was prevalent in the first decades of the VOC's existence but was eschewed in favour of sale by fixed price and at auction. The preferred mode of sale differed in certain periods and for products with different longevity, always with an eye on keeping prices in the Republic high. Comparatively little research has focussed on the WIC sales, which used fixed price and chamber auctions as the modes of sale. Over time, more and more of the goods sold off by the company were in fact goods belonging to private merchants who operated under contracts and paid recognition fees to the company, as well as the prize taken by company cruisers and privateers in the charter area.

In the early seventeenth century chambers of the VOC sold whole consignments of spices to merchant consortia on the basis of contracts. Glamann has analysed the

[18] Article 31 (1621) in Laet, *Iaerlijck Verhael*, I:18.
[19] Article 31 (1621) in ibid. On the commission to which the directors were entitled, see articles 28 and 29.
[20] *Accoord tusschen de bewinthebberen ende hooftparticipanten* in ibid., I:28.

contracts to show that the pool of merchants purchasing spices of various kinds was very small, and different constellations of the same men were involved in numerous contracts. Glamann argues that in the early years of the seventeenth century a number of 'great buyers' of company merchandise dominated the purchase of imports. In 1620, Elias Trip, Gerrit van Schoonhoven, Jeronimus de Haze and Philip Calandrini bought up the entire pepper stocks of the Company. In 1621, Trip and Calandrini purchased the pepper arriving in the Republic on two of the company's ships. In 1622, the entire stock of pepper was purchased by Gerrit Dircksz Raedt, Cornelis van Campen, Hans Broers and company. The VOC agreed not to offer pepper for sale for one year as part of the terms of the agreement.[21] This was not specific to pepper – consortia purchased the company's stock of mace in certain years, and of nutmeg. What is very clear in Glamann's recounting of the sales is that the same pool of buyers, formed in different partnerships, bought up not only pepper but also the other spices. These men, some of whom were simultaneously chamber directors, had diverse trading portfolios: Elias Trip was a director in the chamber Amsterdam from 1614-1636, he was involved in the directorship of the Levant trade, and, with Louis de Geer, was involved in trading iron, arms and ammunition to and from Sweden; Gerrit van Schoonhoven was a director of the Zeeland chamber at the company's founding in 1602; the de Haze family was involved in trade to Spain, Italy and the Levant, and later in the 1600s became directors in the VOC; the Bicker family was active in trade to the White Sea, and held seats as directors in the VOC and WIC.[22] On the basis of numerous contracts for pepper, other spices, as well as textiles of various kinds, Glamann concludes that sale by contract was the dominant form of sale in the period up to the 1630s.[23]

The contracts which the Gentlemen Seventeen drew up with the consortia, or "syndicates" as Glamann calls them, were far-reaching. He indicates that not only could a contract cover all the stocks the company had, and that meant across the chambers, but the same contract could include all the imports within the coming specified period of time. One such contract for pepper in 1623 included all the chambers' stocks as well as all imports in the following seven months. This likely covered one fleet, taking into account the contingencies of the fleet being separated at sea and thus ships arriving at different times. Furthermore, for two years the company itself would not offer any pepper for sale. The sale amounted to approximately *f*4 million.[24]

The sale of return goods was the cause of much strife within the VOC in the early seventeenth century, as dicussed in Chapter 5. Shareholders made their discontent known, over two overlapping issues: firstly, the involvement of company directors; secondly, the small pool of Amsterdam merchants who benefitted from the contracts. The first issue, the involvement of directors in the purchase of return goods, was one of the core points of conflict between investors and directors in the period leading up to the expiration of the first charter in the early 1620s. Directors, the shareholders lamented,

[21] Glamann, *Dutch-Asiatic Trade*, 30-31.
[22] Data Vidi. Ibid., 34.
[23] Ibid., 33.
[24] Ibid. Thanks to Cátia Antunes for pointing out the detail about the separation of the return fleet.

abused their positions of power. But shareholder protests died down, seemingly as a result of more regular dividend payments.[25] Company directors continued to buy up commodities. During the 1620s, the Gentlemen Seventeen sold spices and silk by contract to consortia which comprised mainly Amsterdam merchants, some of whom were simultaneously company directors, or relatives of directors. This caused major ructions within the company – tensions between Amsterdam and Zeeland came to a head in 1629 when the Zeeland Chamber representatives in the Gentlemen Seventeen announced that they, following the orders of the States of Zeeland, would not deliver pepper which had already been sold by the Seventeen. Their refusal was based on the dominance of a small group of Amsterdam merchants who were not only company directors themselves, but also in the Gentlemen Seventeen. The Zeeland Chamber balked at the way that this small circle of Amsterdam directors controlled the market. In the way they operated, the Amsterdam merchant-directors were curtailing the independence of the Zeeland Chamber on the one hand, and on the other hand, the Amsterdammers were circumscribing the opportunities for other merchants – and the Zeeland chamber would probably have had Zeeland merchants' interests at the top of their list – to profit from the trade in pepper. The Zeelanders took the matter to the States General to adjudicate. The States General upheld the sales contracts which had already been concluded by the Seventeen but, surely in an acknowledgement of the Zeelanders' concerns, also took the "fundamental decision" that no directors who were part of the Gentlemen Seventeen would in future be allowed to purchase commodities or have commodities purchased for them, by contract. It is important to note that this did not cover the directors of chambers, only the Gentlemen Seventeen. For Zeeland this did not go far enough: Zeelanders tried to bar all directors from purchases, but did not succeed. Kristof Glamann states: "Neither the States General nor the Heeren XVII would shake the private *bewindhebbers*' access to buying the commodities whether by contract or otherwise."[26]

Problems including speculation in spices persisted during the 1630s, prompting a plea from the Gentlemen Seventeen that the chambers conduct sales as homogeneously as possible and report back to the Gentlemen Seventeen confirming the chambers' adherence to general terms of sale as well as provide information on "inferior debtors".[27] It may be these 'terms of sale' to which Pieter van Dam referred in his account of the company's history. According to the criteria it was required that should an agent purchase goods on behalf of his principal, he declare the name of his principal and that no-one, whether principal or agent, was allowed to purchase goods from the company and pay for these with sums which the company owed to the individual, whether shares, or debts. No-one was allowed to purchase goods from the company if he still had outstanding debts or an account with the company that was open.[28] These regulations should have resulted in

[25] Heijer, *De geoctrooieerde compagnie*, 81-84; Gaastra, *The Dutch East India Company*, 34-35.
[26] Glamann, *Dutch-Asiatic Trade*, 35-37, quote 37.
[27] Ibid., 38.
[28] Other conditions of sale were specified: amongst others, payment in cash within a specified time period, a period of discount, interest rate, necessity of guarantor, delivery and collection. Dam, *Beschrijvinge*, I.ii:295-297. It is not clear when exactly this regulation was introduced.

more transparency in the market and consequently, should have made it easier to enforce regulations that excluded the Gentlemen Seventeen from purchasing goods. In addition, the regulations regarding terms of sale shielded the chambers from commercial risk. The first court case of this chapter deals with a purchase of spices in which exactly these issues were at stake. The original purchase dated to 1626 and the dispute was sentenced in 1634, making it quite possible that it was one of the conflicts which contributed to the introduction of the regulations which van Dam detailed.

By the end of the 1630s, how commodities were sold in the Republic and to whom had been a point of conflict within the company for decades. It came to the attention of the Gentlemen Seventeen that the company had been defrauded by merchants who had purchased the whole stock of a particular good under the pretence of being different people, this was in spite of the regulation that agents had to declare the name of their principals when making purchases from the company. According to Kristof Glamann, the consequence was a change in sale strategy: instead of by contract, the chambers would sell goods to the highest bidder at auction or at a fixed price. Glamann sets the date for the beginning of public auctions at 1642.[29] The dispute between the Amsterdam auctioneers and the Amsterdam chamber indicates that auctions in fact began before this date. The remuneration dispute, discussed in Chapter 5, had its roots in the 1630s.

Which mode of sale was employed depended on a number of factors. One of these was the nature of the commodity. Els Jacobs makes the point that goods that perished easily and quickly could not be stockpiled and so were more likely to be sold at auction. An example of this was cinnamon. A second factor was the level of stock in company warehouses in the Republic. Chambers auctioned off cloves in periods when stocks in the Republic were low but when the chambers had higher levels of stock, some direct sales of the spice were concluded by the chambers.[30] Els Jacobs recounts how the auctions held by each chamber were organised:

> The sales became public as of 1642 and also acquired an international character. Buyers were allowed to sample the products in the warehouses a week before the auction. Brokers inspected the wares and recorded their judgments on quality in small printed books with lot numbers. The VOC distributed an extensive catalogue of 150 to 200 pages containing specific information on quality, measurements and patterns of the Indian textiles. The sales began at 9 a.m., led by an auctioneer, and were held in the presence of several directors, the secretary of the city and a few clerks. As a rule, thirty to forty brokers and important merchants gathered in the auction hall of the East India House.[31]

In general, the preferred means of selling spices in the Republic was at fixed prices from the chamber warehouses. According to Jacobs, "unlimited and direct sale from company warehouses at fixed prices prevented speculation and price jacking in the Dutch Republic.

[29] Glamann, *Dutch-Asiatic Trade*, 38.
[30] Jacobs, *Merchant in Asia*, 18-20, 52.
[31] Jacobs, *In Pursuit*, 93-94.

Regulation of the supply to the European market guaranteed stable, high profits."[32] But regulating the supply of spices and other colonial goods was no simple task. There were at least three factors that made it difficult for the company to control supply to Europe. Firstly, the VOC administrators in Asia struggled to control production levels of some spices, even those like cloves over which the company had a monopoly. When they did control production, the company could set the price at which it procured the spice in Asia. Profit margins on such goods, Glamann points out, were determined more by supply and demand fluctuations in Europe than changing costs of production.[33] Secondly, Europe was not the only market on which the company sold spices. The VOC sold spices in Asia too. The Gentlemen Seventeen tried to set the price in Asia to balance company interests – to keep the price high enough to profit but low enough to discourage illegal private trade and smuggling. A product like pepper, over which the company never achieved a monopoly, was sold in Asia to cover company expenses there, which Els Jacobs says meant that the quantity arriving in the Republic each year was a surprise to the directors.[34] Finally, from the point of view of the directors in the Republic, the time lag between ordering goods for sale in Europe and actually receiving the goods – which could total about two years – posed another challenge to smooth out market fluctuations.[35]

The VOC's strategy was not as simple as selling perishable goods at auction and non-perishable goods by direct sale from chamber warehouses. Non-perishables such as textiles were also sold at auction.[36] One explanation for the sale of porcelain in this way may be that it was sold on behalf of private merchants who paid the company freight, and thus was not in fact a company import. That this recognition trade was allowed at all was likely the consequence of the fact that, as Els Jacobs states, the trade in porcelain was not very profitable for the company.[37] Ownership of the goods, and the fact that they were sold at auction, was under discussion in the court case in the preceding chapter between the Amsterdam auctioneers and the VOC Chamber Amsterdam. The remuneration dispute was precipitated by the growing recognition trade and consequent increase in work for Amsterdam auctioneers (Chapter 5).

How the WIC went about selling the goods that were brought back from the Atlantic is not a matter which has received any attention in scholarship. It is quite plausible that the WIC learnt from the VOC's experience and as such, held public auctions from an early date. Article 32 of the WIC's founding charter dealt with the way in which chamber directors should announce the sale of return cargoes but not the way in which the sale had to be conducted. It stated:

[32] Jacobs, *Merchant in Asia*, 36.
[33] Glamann, *Dutch-Asiatic Trade*, 93.
[34] Jacobs, *Merchant in Asia*, 20, 73.
[35] Glamann, *Dutch-Asiatic Trade*, 25-26.
[36] Fatah-Black and de Windt note that while spices were generally sold at the spring auction, textiles were auctioned in the autumn. Fatah-Black and Windt, "De architecten," 7.
[37] Jacobs, *Merchant in Asia*, 189.

> The Directors shall be required to notify [the public] by putting up posters as often as they receive wares and merchandise so that everyone may have timely knowledge thereof before proceeding to actual sale.[38]

This is a clear indication that the sales were public, and that the company made an effort to reach potential buyers in advance of the sales. Whether or not the WIC sold whole lots or shiploads of specific goods to consortia as the VOC was doing during the seventeenth and eighteenth centuries, is uncertain. During the 1620s and 1630s sale by contract was causing ructions in the VOC as recounted above. Whether or not the practice was avoided entirely by the WIC – learning from the VOC's conflicts – is a possibility considering that the WIC was already holding auctions in the 1630s.

It is likely that the explanation for which modes of sale were employed by the companies in different periods can be found in four interconnected factors. Firstly, the nature of the goods impacted whether or not they could be stockpiled in company warehouses in the Republic. The second factor was whether or not the company monopolised trade in that particular product. Thirdly, who owned the goods – were they company goods, recognition goods or prize? – played a role in how they were sold. Finally, market conditions in Europe had a bearing on mode of sale, specifically how the companies could generate the most profit. Together, these factors influenced how different goods were sold in different periods.

Kristof Glamann's research has shown that in the early seventeenth century the market for VOC colonial imports was dominated by a small pool of merchants. According to Glamann, in the eighteenth century merchants specialized in specific products, and there was "no immediate connexion between the great buyers and the Directors of the Company, the Heeren XVII."[39] While he indicates that the situation was more diffuse than it had been in the seventeenth century, recent research on the eighteenth-century Middelburg auctions shows a number of continuities. In particular, Karwan Fatah-Black and Mike de Windt have found that the market for colonial imports continued to be dominated by a small pool of merchants, the great buyers, and these men succeeded in dominating the market over half a century at least, through family succession. To what extent these great buyers managed to direct the VOC's policy, or even that of the Republic, remains an avenue for future research.[40]

The charters which were granted to the Dutch East and West India Companies addressed the sale for return goods in the Republic only perfunctorily. This indicates that the choices of how to sell goods and to whom, were left up to the companies themselves, and likely devolved to the level of the chambers. The sale of company goods precipitated conflicts which involved the chamber directors as litigants. In some of the cases they appear as the purchasers of goods themselves. It is to disputes over property rights,

[38] Original: "*De Bewinthebberen sullen gehouden wesen by affixie van billetten te notificeren soo dickwils sy eenige waeren ende coopmanschappen van nyeuws hebben ontfangen, ten eynde een yeder daervan tydelyck kennisse mach hebben, aleer tot eyndelycke vercoopinge sal werden geprocedeert*." Article 32 (1621) in Laet, *Iaerlijck Verhael*, I:18.

[39] Glamann, *Dutch-Asiatic Trade*, 30.

[40] Fatah-Black and Windt, "De architecten," 2, 10.

precipitated in some way by the sale of goods by VOC and WIC chambers, to which we now turn.

VOC Chamber Sales

An issue which was peculiar to the VOC was the problem of merchants buying up all the company stock and then profiting from the resale, instead of the company realising the profits of its monopoly. As Els Jacobs states, "[t]he Company did not sell the products on the open market thus the merchants profited from the monopoly of the VOC."[41] A case from the 1620s between the Dutch East India Company and the merchants Jan and Matthias van Erpicum highlights the company's concern with losing out to private merchants.[42]

The conflict arose during the 1620s, a period during which the company was still selling its commodities on contract. The court's sentence recounts how spices were purchased from the chambers of the VOC during the period of sale by contract in an astonishing level of detail. Furthermore, this case reveals the VOC's concern with who profited from the company's monopoly. In this regard, the tensions between Amsterdam and Zeeland will be highlighted as the rivals within the company took action in the matter. Each of these issues will be considered here, as will the splinter cases which came out of the conflict over purchasing spices.

During 1626, there were three purchases of spices made from the VOC chamber Delft which were inextricably linked in the legal proceedings between the VOC and the van Erpicums and their associate Jan de Vogel. The first purchase was made on 16 February 1626 by the van Erpicum's representative, Jan Adriaenssen Verburch (or van der Burch). He purchased thirteen bales (*balen*) of pepper weighing 4401 pounds at 26 *grooten* per pound, valued at *f*2,832:1. He paid for the pepper with a bill (*assignatie*) in Jan van Erpicum's name. Non-payment resulted in legal proceedings in Amsterdam – between Jan van Erpicum, Amsterdam merchant, and the VOC chamber Amsterdam which had received the bill from the Delft chamber – as well as in Delft – VOC chamber Delft against the agent Verburch over the same issue of non-payment.[43] Why the van Erpicum merchants refused to fulfil the bill used by their agent is not discussed in the case. One possibility, is that it was a delay tactic which they hoped would gain them enough time to sell the pepper before they actually had to pay for it.

The second purchase was a quantity of cloves. Cornelis Jansz Hartigsvelt bought cloves from the VOC Chamber Delft and sent them to Amsterdam.[44] Jan van Erpicum interfered with the delivery. When the cloves arrived in Amsterdam, Jan van Erpicum had

[41] Jacobs, *In Pursuit*, 93.

[42] It is unclear why the merchants themselves were not named as the claimants in the High Court records. Rather, the claimants were the *regenten van de huijsarmen ende aelmoesseniers tot Amsterdam* who, with Jan de Vogel, merchant in Amsterdam, had intervened for Jan Adriaenssen Verburch.

[43] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *726* (1634) Geextendeerde sententie, scans 90-1.

[44] Hartigsvelt became a director in the Rotterdam chamber of the VOC in 1639 and held the position until 1641. Data VIDI.

them seized at the quay, on the grounds of his ongoing dispute with the VOC. What exactly he hoped to achieve by seizing the cloves someone else had purchased was not made explicit. The consequence of van Erpicum's actions was legal proceedings against him, that is Hartigsvelt sued van Erpicum in Amsterdam. The court ruled against van Erpicum's seizure of the cloves but van Erpicum was granted permission to appeal the decision in the Court of Holland. Van Erpicum's actions meant that the two purchases from Delft became intertwined. However, there is no specific indication in the High Court's sentence of any connection between the two transactions except that van Erpicum had the cloves seized because of his dispute with the Company.[45] How exactly he intended to pressure the company by meddling in the Chamber Delft's transaction with Hartigsvelt is unclear.

The third purchase was also cloves. Hendrik van Aecken made the purchase at the Delft Chamber. The way the sentence recounts the transaction provides a unique glimpse of how the spice purchases unfolded. Van Aecken arrived in Delft on 7 November 1626 and visited the chamber's accountant (*boekhouder*). The accountant then took him to one of the directors of the chamber whom he informed of his intention to purchase cloves. The director, who was not named but was most likely Gerardo Cornelisz Briell van Welhouck, told him that he could attend the directors' meeting the following Monday at 3pm, that is 11 November 1626. On Monday afternoon van Aecken was announced by the chamber's servant and called into the meeting of the chamber directors. He was asked how many *quartelen* he wished to purchase, to which he reportedly responded that he wished to purchase all the cloves that the company had. When it was announced that there were 100 *quartelen* on offer van Aecken agreed to buy it all! This was likely not a surprise to the directors in a period in which the company was selling spices on contract to merchants who bought up vast quantities, shiploads or even the whole stock as discussed earlier. Despite the quantities of cloves discussed, the chamber only sold him nine or ten *quartelen* (either the stocks were not as high as the directors had said or they were unwilling to sell it all). Van Aecken purchased the cloves in the name of his 'masters', which purchase was recorded in the chamber's books and signed by Hendrik van Aecken himself. All that remained was the delivery of the ground cloves as per the signed contract. But the Delft chamber refused – they remained unwilling to deliver the spices to the purchasers.[46]

The Delft chamber became aware that the purchasers, van Aecken and his principals – Jan and Mattheus van Erpicum and Jan de Vogel in Amsterdam – could profit greatly from the resale of cloves which they had purchased from the company. It was allegedly for this very reason that the Delft chamber refused to deliver the cloves which it had sold. They did not deliver the ground cloves "because they noticed that considerable profit remained for the buyers."[47] That private merchants were profiting from the monopoly of the company through the resale of Asian imports had been a concern for the company for a number of years already, as discussed above.

[45] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *726* (1634) Geextendeerde sententie, scans 91-2.
[46] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *726* (1634) Geextendeerde sententie, scan 91.
[47] Original: "*overmits zij bemerckten datter merckelijck proffijt aende voors. coopers was gebleuen.*" NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *726* (1634) Geextendeerde sententie, scan 91.

It is possible that there was another motive behind the refusal to deliver the cloves – the VOC chambers used the opportunity to show that they would not tolerate merchants buying spices but not paying for them. That is, the VOC used the cloves purchased later in 1626 to pressure the merchants to pay for the pepper that Verburch purchased in February of that year, but had not paid for because the bill was refused. In this way, the company may have made an example of the van Erpicum brothers to demonstrate the company's unwillingness to sell on consignment.

The sale of spices to the merchants van Erpicum *et al* was not only a concern of the Delft chamber. It involved the Amsterdam chamber too. The Amsterdam chamber's first involvement was to collect the payment due for the first purchase – pepper bought by Jan Adriaenssen Verburch in February 1626. The bill with which Verburch paid was sent to the Amsterdam chamber, but when they had no success in eliciting the funds from Jan van Erpicum they returned the bill to Delft.[48] It is possible that cooperation of this nature was common between the chambers for reasons of convenience. Amsterdam's role in the third purchase – van Aecken purchased cloves in late 1626 – is perhaps most interesting as it links to the issue of who profited from the sale of company imports.

The court documents reveal that the Amsterdam Chamber had prohibited the sale of cloves. Unfortunately, the details of the prohibition were not given in the court's sentence but it is quite possible that sale by contract was behind it. As mentioned earlier, in at least some of the contracts of sale for the entire stock of a particular commodity, the Gentlemen Seventeen agreed not to offer any of that product on the market for a specified period.[49] A contract concluded by the Seventeen in Amsterdam may have been the reason behind the prohibition. The court's ruling briefly discussed whether or not the purchasers knew of the prohibition when they made the purchase – the underlying question in the judges' minds was likely whether or not the Amsterdam merchants were intentionally trying to circumvent an Amsterdam prohibition on purchasing cloves by approaching a different chamber via their agent. The court determined that the buyers did not have prior knowledge of the prohibition.[50]

What is clear from this case is that the chambers and the merchants involved took bold action – in terms of the purchases they made, seizing goods which were at the quay, and the legal proceedings in which they got involved – when the purchase and delivery of pepper and cloves did not go smoothly. The legal knots in which the men were tied and tried to tie each other are a defining feature of the story which the sentence of the court sets out. Various elements of the case are fruitful avenues to pursue to deepen the current understanding of the market for imported Asian goods in the Republic, in particular the struggle between Amsterdam and the 'peripheral' chambers, and the possibility that, already in this period, colonial goods were concentrated in the Amsterdam market by purchase and transport from other VOC chambers. But what is particularly relevant here, is the VOC's attempt to curtail access to the spice market in the Republic. In October 1634 – more than seven years after the initial purchase – the High Court partially overturned

[48] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *726* (1634) Geextendeerde sententie, scans 90-1.
[49] Glamann, *Dutch-Asiatic Trade*, 33.
[50] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *726* (1634), Geextendeerde sententie, scan 91.

the Provincial Court's sentence, ruling that the VOC Chamber Delft had to deliver the nine *quartelen* of ground cloves to the claimants, or, if the chamber could not do so, then the directors had to compensate the claimants and pay them damages and interest which resulted from the chamber's refusal to deliver the cloves. The bench added that the claimants had to pay the Chamber Delft the sum promised, which may refer to the price agreed for the initial purchase of pepper, or to the subsequent purchase of cloves. This sentence was pronounced on 10 October 1634.[51] That the company was sentenced to furnish the cloves or compensate the merchants the value of the products, meant that the Amsterdam merchants' property rights were protected.

Debt, bankruptcy and liability

In this section, two cases will be examined, one against the VOC and one against the WIC, which were brought by parties against the directors of a specific chamber. In both cases, the litigants sought a court ruling to maintain their property rights. As in the complex case between the Bartolottis and the VOC Chamber Hoorn which featured in Chapter 5, the two cases here involved debt to a chamber resulting from a purchase at company auction, followed by bankruptcy.

How bankruptcies were dealt with in the Dutch Republic during the early modern period has not received much attention in scholarship. In fact, this is not specific to research on the Dutch Republic: in the wake of the 2008 financial crisis, Emily Kadens wrote that "[d]espite the current and historical importance of bankruptcy, its pre-modern past has barely been investigated."[52] One of the key studies in the field is Julian Hoppit's research on bankruptcies in eighteenth-century England. He concluded that over the course of the century, as England was entering the Industrial Revolution, the level of bankruptcy increased in sectors which were expanding. This leads to a revision of the relationship between business success and growth and may yet encourage more research into business failure.[53] But when it comes to how bankrupts and bankruptcies were dealt with, Hoppit's study reveals little.

Regarding the treatment of bankrupts, Jeroen Puttevils has pointed out an important change which took place in sixteenth-century Antwerp. There, a shift occurred from the arrest of the debtor to the arrest of his goods.[54] This was a precursor to the change in attitudes to bankruptcy across Europe in the eighteenth century. In that period, moral understandings of bankruptcy gave way to economic ones.[55] Furthermore, in

[51] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *726* (1634), Geextendeerde sententie, scan 93.
[52] Emily Kadens, "The last bankrupt hanged: Balancing incentives in the development of bankruptcy law," *Duke Law Journal* 59, no. 7 (2010): 1235.
[53] Julian Hoppit, *Risk and Failure in English Business, 1700-1800* (Cambridge: Cambridge University Press, 1987), esp. 176.
[54] Puttevils, "See you in court! The role of the local and central courts as mercantile contract enforcers in sixteenth-century Antwerp," 29.
[55] Thomas Max Safley, ed. *The History of Bankruptcy: Economic, social and cultural implications in early modern Europe* (London and New York: Routledge, 2013). On attitudes to bankrupts and bankruptcy in England – the shift from dishonest to both dishonest and honest causes of failure – see Hoppit, *Risk and Failure*, Ch 2.

England, the 1706 Act of Anne, referred to as 4 & 5 Anne, was a turning point. That legislation introduced capital punishment into England to deal with bankrupts who did not honestly and exhaustively declare their assets. It must be emphasised that dishonesty following the bankruptcy – the intentional harming of the creditors' interests through concealment of assets, for instance – was the capital offence, not the business failure per se. In addition to the threat of punishment, 4 & 5 Anne also offered the hope of beginning again after insolvency - debt discharge was an incentive for bankrupts to cooperate in their own financial dissolution.[56]

Turning to the practicalities of administering bankruptcies, much remains unclear, in particular as regards preference among creditors. Equitable distribution of a bankrupt's assets among the creditors is one of the universal aims of bankruptcy law, according to Louis Levinthal.[57] In the Dutch Republic, bankruptcy cases were dealt with by the Insolvency Chamber, which, the cases which follow show, decided matters of preference in claims on an insolvent deceased estate. One of the fucntions of the commissioners of the Insolvency Chamber was deciding preference among claimants on insolvent estates, as the case involving Jan Maertens' heirs demonstrates.

There is very little clarity in scholarship on preference among creditors. According to Christiaan van Bochove and Heleen Kole, Amsterdam regulations required that tax arrears and registered debts were paid first, that is, they were preferential. The Insolvency Chamber's tax and curators' salaries were too. What was left was then divided among holders of secondary claims.[58] Bram Hoonhout's research has shown that debts to the WIC were prefential in cases of insolvency in the colonies of Essequibo and Demerara. But whose claims followed was not always clear. Suppliers of provisions for the plantations in the colonies believed that they were next in line to make claims, which assumption, Hoonhout indicates, was crucial in underpinning a complex web of debt.[59]

In the case which follows we meet the heirs of Jan Maertens who used the courts to try to maintain their right of preference in the bankruptcy, that is, their claim on Maertens' insolvent estate would have priority over creditors, specifically the VOC Chamber Zeeland. The second case was also rooted in Zeeland, but involved the WIC chamber there. The question that arose in the case between Laurens Verpoorten and the chamber directors was one of liability – were the chamber directors jointly liable for chamber debt resulting from a purchaser who did not pay for what he bought at auction? Examining the court's rulings in these two cases, both of which were pursued through local courts to the High Court, reveals the way in which groups sued to protect their perceived property rights when threatened by company actions.

[56] Kadens, "The last bankrupt hanged," 1261-1270.
[57] Louis E. Levinthal, "The Early History of Bankruptcy," *University of Pennsylvania Law Review* (1918): 225.
[58] Bochove and Kole, "Uncovering private credit markets," 53, 53 n. 40.
[59] Hoonhout, "The West Indian Web," 222-223.

Jan Maertens' heirs vs. VOC Chamber Zeeland

In 1694, Johannes Maertens purchased "a large quantity of spices and other wares and merchandise" from the VOC chamber Zeeland on the public auction held in November of that year.[60] His purchase greatly exceeded the value of *f*60,000.[61] At the time Maertens made the purchase he was a director in the chamber Zeeland, a position which he held from 1688 until his death in 1695.[62] It is clear from the case that Maertens passed away before he completed the payment for the goods he had purchased and received from the Company.[63]

As was required of a director, Maertens owned shares in the Chamber Zeeland. The nominal value of the shares was 1000 Flemish pounds, approximately *f*6,000. According to the VOC, the shares could be sold by the executors of the estate on condition that the proceeds be used to pay off a part of Maertens' debt to the chamber.[64] The executors did indeed sell the shares and transferred them into the new owner(s)'s name in accordance with company policy on transfer of ownership. The resulting sum – 4050 Flemish pounds or *f*24,300 – was deposited in the bank in Middelburg in the company's account and used to reduce Maertens' debt.[65] The practice of selling shares to make good on a shareholder's debt to a chamber was certainly not novel at this point in time. It was discussed at length in the sentence between the Bartolotti family and the Chamber Hoorn in the court's ruling in the 1650s, which featured in Chapter 5. The VOC seemed to have followed its normal practice in the situation of shareholder debt for spices.

However, a while after Maertens' death, representatives of one of his heirs, a woman named Anna Becx, summoned the chamber directors before the Commissioners of Insolvent Estates in Middelburg (*Commissarissen van de Desolate Boedels tot Middelburg*). The chamber directors lamented this course of action, contending that no one could claim any right to the shares nor to the monies resulting from the sale thereof, and pointing to the fact that the sum had already been deposited to reduce the debt. In spite of this, the guardians of Anna Becx chose to begin legal proceedings and later she was represented by her husband, Gijsbert van Hogendorp, who proceeded in Anna's stead (*nomine uxoris*). The claim was one of preference in bankruptcy – that is, Anna would receive her inheritance from the estate before the chamber could collect money owed it. The dispute arose over the sum of 867:5:1 Flemish pounds, or approximately *f*5,200.[66]

The Insolvency Chamber awarded preference (*preferentie*) to van Hogendorp, consequently relegating the claims made by others, including the VOC Chamber Zeeland. In addition, the Commissioners awarded van Hogendorp five per cent interest on the sum. The Commissioners decided this in July 1697.[67]

[60] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *794* (1702) Geextendeerde sententie, f. 94r.
[61] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *794* (1702) Geextendeerde sententie, f. 94r.
[62] Data VIDI
[63] The amount he still owed was left blank in the opening of the High Court's sentence.
[64] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *794* (1702) Geextendeerde sententie, f. 94v.
[65] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *794* (1702) Geextendeerde sententie, f. 94v.
[66] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *794* (1702) Geextendeerde sententie, ff. 93v-94v.
[67] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *794* (1702) Geextendeerde sententie, f. 96v.

The Chamber Zeeland appealed the award of preference before the city Aldermen in Middelburg, who decided the case in January 1699. Still considering themselves hard done by, the directors appealed the Aldermen's sentence. Bypassing the Provincial Court (*Hof van Holland*), the VOC Chamber Zeeland directors appealed the 1699 verdict in the High Court. The High Court passed its sentence on 8 April 1702, declaring that the chamber directors had not been aggrieved by the sentence of the Middelburg Burgomasters (20 January 1699). The Zeeland chamber was thus condemned to pay the fine for an appeal which was not well-grounded (*boete van fol appel*) plus the costs of the legal proceedings.[68] The three legal institutions protected the priority of inheritance over the VOC as a creditor of Maertens' insolvent estate.

The High Court passed a sentence a year later on the same matter. However, the named parties were different. The 1703 sentence names the opponents of the VOC Chamber Zeeland as the two guardians of Maertens' orphan, Clara Maertens. The guardians were Abraham van der Beecke and Paulus Securius. In addition, the sum of money mentioned in the opening of the case was vastly different – instead of approximately 870 Flemish pounds the amount specified was 2,123:6:2 Flemish pounds, in the order of *f*12,700. According to the sentence, the case followed the same trajectory: from the Insolvency Chamber in Middelburg via the Aldermen of the same city, to the High Court where the chamber appealed the Aldermen's verdict.[69] In the High Court, the judges decided that the VOC Chamber Zeeland had not been aggrieved by the sentence of the Middelburg court, which was pronounced on 28 July 1703.[70] This was the same conclusion to which they had come in the case between the chamber and van Hogendorp the previous year.

In both cases which were brought by the representatives of Maertens' heirs against the Chamber Zeeland, the courts at all levels protected the rights of the heirs to receive their portion before the chamber could claim partial repayment of the debt Maertens owed for spices purchased in 1694. The chamber directors would surely not have appealed the Commissioners of Insolvent Estates' award of preference to their heirs before the Aldermen and again in the High Court if they did not believe that there were some grounds for their arguments. But the company practice of seizing shareholder's shares to make good their debts did not stand up in court against the priority of heirs. The High Court upheld the lower court's ruling that heirs receive their portions before the company was paid out.

WIC Chamber Zeeland vs. Laurens Verpoorten

Laurens Willems Verpoorten and his son featured in Chapter 2 as contract holders to conduct trade in the area of the WIC's charter. They were traders of human cargo, which trade they conducted both legally and illegally. The contracts for recognition trade were

[68] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *794* (1702) Geextendeerde sententie, f. 106r.
[69] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *795* (1703) Geextendeerde sententie, scan 87, f. 85v-86r.
[70] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *908* (1703) Register der dictums...geresolveerd, scan 145.

the focus of their conflict with the company in Chapter 2; relevant to the sale of commodities in the Republic is the dispute between Laurens Verpoorten and the WIC over sugar brought back to the Republic as "good prize" and sold by the Zeeland Chamber in 1660.[71] More significant than the sum at stake was the question of the extent of chamber directors' liability.

Laurens Willems Verpoorten was the bookkeeper and part owner of the ship *De Braecke*, which, together with the *Sinjoor*, took a ship named *De Vlaecke* prize in 1660. *De Vlaecke*'s cargo consisted at least in part, of sugar owned by Portuguese merchants.[72] At the request of the captain of *De Braecke*, Claes Raes, the WIC Chamber Zeeland sold the sugar at auction in September 1660.[73] The condition of the sale was that the proceeds would be deposited in the Middelburg exchange within fourteen days, and the payment would be signed by the chamber's accountant (*cassier*) in the presence of the commissioners of trade (*commissarisen over de negotie*). When the payment was settled, the sugar would be delivered, with no expectation that the sugar would be delivered before payment.[74] However, things proceeded differently due to the devious actions of one of the chamber directors.

Nicolaes Clement, "notwithstanding that he was a fellow director of the same company" purchased 24 chests of sugar at the auction.[75] He then set out to avoid the conditions of sale by deceiving the overseer of the chamber deliveries, Jan Abrahamsz. According to the chamber directors, Clement presented Abrahamsz with a note (*biljject*) instructing him to deliver the sugar to Cornelis Domburch, who was Clement's servant (*dienaar*). Clement had signed the written instructions – but no other directors had – and dated them 2 September 1660. According to the chamber, this was "all contrary to the aforementioned conditions, stipulated publicly, and read aloud", presumably in reference to the conditions of sale, but perhaps also indicating that the chambers had specific procedures for instructing warehouse workers on how and when to deliver goods sold by the company at auction. With his note, Clement succeeded in moving the sugar without having paid a cent.[76] Specifically, Clement instructed Abrahamsz to load nine chests of the sugar onto a vessel (*beurtschip*) bound for Antwerp, and to store the rest in a warehouse in Middelburg for which he had handed over the keys. Abrahamsz duly delivered the 15 chests of sugar to the warehouse, where the original numbers on the chests were erased and new numbers added.[77] The sugar could no longer be traced as the prize sold at the auction. The chamber accused Clement of using these "*malicious*" means to rob the

[71] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *765* (1673) Geextendeerde Sententie, scans 59-64.
[72] The sentence does not specify if the ship was Portuguese, or if the ship was transporting goods on the account of Portuguese merchants. This important distinction between the 'nationality' of the ship and of the cargo resurfaces in the case of the *Eduard* later in this chapter.
[73] It is worth noting that Claes Raes was the captain of vessels owned by Laurens Verpoorten and equipped for trans-Atlantic slave trade which were dicussed in Chapter 2.
[74] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *765* (1673) Geextendeerde Sententie, scan 60.
[75] Original: "*niet jegenstaende dat hij mede Bewinthebber van de selve comp[agni]e was*" NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *765* (1673) Geextendeerde Sententie, scan 60.
[76] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *765* (1673) Geextendeerde Sententie, scans 60-1, quote 60.
[77] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *765* (1673) Geextendeerde Sententie, scan 61.

chamber of its sugar. Immediately after this, the chamber states, Nicolaes Clement went bankrupt.[78]

It seems that it was the bankruptcy which brought Clement's underhanded dealings to light. The chamber used all possible means of getting the sugar back, possibly including leaning on Abrahamsz as an informant.[79] But since nine of the chests had been shipped to Antwerp, the chamber only managed to reclaim the 15 chests which had been stored in Middelburg. Thus, from the company's point of view, Clement still owed 1,621:18:3 Flemish pounds (more than *f* 9,700). Part of that was owed to Verpoorten as the proceeds of the auction, but his portion, the chamber directors contended, had to be reclaimed from Clement's insolvent estate, not from the chamber. The directors were vehement that they, as Clement's fellow Zeeland directors, should not be held liable for his debt to Verpoorten *et al*. They argued their limited liability on the basis of the 1621 charter.

> [The sum] could not possibly be thought to be for the aforementioned West India Company's expense [because] the directors of the respective chambers were not liable nor vulnerable to lawsuits for evil deeds and abuses of their colleagues, in conformity with the 34th article of the charter granted to them by the High Mighty Gentlemen States General in date 3 June 1621.[80]

The chamber directors were quick to point out that Article 34 concerned the liability of the chamber directors for their accountants (*kassiers*) and bookkeepers, but not specifically for their fellow directors. The term used in the court records was vouch (*responderen*), the same verb used in the original charter.[81]

Dari-Mattiacci *et al* defined limited liability as that provision which "shields the owners' personal assets from company creditors".[82] The authors contend that limited liability, along with representation, entity shielding, capital lock-in and tradable shares are the features which together constitute the corporate form, and which imbue a company with legal personhood.[83] According to Dari-Mattiacci *et al*'s argument, limited liability was introduced after the second charter was issued, in late 1623 and with this final piece in place, the VOC had taken on the corporate form.[84] While this particular case

[78] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *765* (1673) Geextendeerde Sententie, scan 61.
[79] The sentence details the original numbers of the chests, and the new numbers assigned to them which, taken together with the indication that the chamber had help in tracking down the sugar, may point to Abrahamsz as an informant.
[80] Original: "*met geen gedachten conde werden gebracht tot laste van de voorsz Westindische compagnie geconsidereert de bewinthebberen van de respective cameren niet gehouden veel min convenibel waren, voor de quade feijten, ende mesusen van hare confraters, in conformite van xxxiiii artijckel vant Octroij aen haer bij de Ho: Mog: heeren Staten Generaal in date den iii Junij 1621 verleent*." NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *765* (1673) Geextendeerde Sententie, scan 61.
[81] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *765* (1673) Geextendeerde Sententie, scan 61. Article 34 (1621) in Laet, *Iaerlijck Verhael*, 18.
[82] Dari-Mattiacci et al., "Corporate Form," 200.
[83] Ibid., 199-200. They also point out that limited liability is the "less essential" of the five features.
[84] Ibid., 213.

does not indicate whether or not the Zeeland directors' personal assets were at stake, it is the directors of the chamber who are the litigants, rather than a general reference to the chamber, or to the company. The dispute between the chamber directors and Verpoorten went to the heart of the obligations of the chamber directors when selling goods on behalf of a third party – to what extent were the directors liable for non-payment, complicated in this case by the fact that the debtor was both a chamber director himself, and bankrupt.

Verpoorten and his fellow shipowners were the ones who were out of pocket as a result of Clement's actions. They disputed the chamber's argument of limited liablity, likely during audiences with the directors. But then they summoned the chamber directors to the court of Middelburg where Verpoorten *et al* claimed the outstanding sum of 1608:13:9 Flemish pounds (over *f*9,600) plus six per cent interest.[85] That sum was calculated based on the total proceeds of the prize sold at auction, which amounted to 12,939:1:1 Flemish pounds (over *f*77,600), minus the chamber's costs and recognition fees (837:8:11 Flemish pounds; approximately *f*5,240). Further deductions were made for the goods Verpoorten and his fellow shipowners purchased at the auction (2,492:18:5 Flemish pounds). And finally, the chamber had paid Verpoorten *et al* 8,000 Flemish pounds in six separate payments. That left 1608:13:9 Flemish pounds outstanding from the auction sales.[86] On 12 July 1661 the Middelburg court passed their verdict: the WIC Chamber Zeeland was ordered to pay the owners of *De Braecke* the sum they claimed, but not the interest.[87]

The chamber directors were not at all happy with the outcome of the case and so appealed the Middelburg sentence. As in other legal disputes, the Chamber directors bypassed the Provincial Court and appealed the Middelburg verdict in the High Court, beginning on 2 August 1661. The chamber's claim was that the Middelburg sentence be overturned and instead, the claim made by the shipowners in the first instance be denied.[88] From Verpoorten and his associates' point of view, it was not the chamber which was aggrieved by the Middelburg sentence, but the claimants themselves considering that their interest claim had been denied. Their lawyer, Quirijn Gaeswijck, submitted *grieven a minima* to the High Court, that is, they claimed that the sentence of Middelburg be approved in so far as it was in their favour, and overturned in regards to the six per cent interest claim which was denied.[89] In this they were mostly successful: not only did the High Court uphold the Middelburg sentence by which the chamber was ordered to pay the shipowners the sum of 1608:13:9 Flemish pounds, but the judges also overturned the ruling on the interest payment. Verpoorten and his associates were awarded four per cent interest per annum, from the time litigation began. The High Court pronounced its sentence on 12 April 1673.[90]

[85] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *765* (1673) Geextendeerde Sententie, scan 61.
[86] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *765* (1673) Geextendeerde Sententie, scan 62-3.
[87] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *765* (1673) Geextendeerde Sententie, scan 61.
[88] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *765* (1673) Geextendeerde Sententie, scan 62.
[89] The official legal term for a partial appeal in this way was submission of *grieven a minima* which is defined in Kersteman, *Practisyns*, 45.
[90] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *765* (1673) Geextendeerde Sententie, scan 62.

While sugar was the sweet substance which soured the relationship between Verpoorten and his associates on the one hand, and the WIC Chamber Zeeland on the other, what was at stake for the chamber was far more than a few thousand guilders. The Middelburg and High Courts ruled on questions of liability of the chamber directors. While the chamber directors argued on the basis of Article 34 that it was limited to covering their accountants and bookkeepers, and not their fellow directors, in adjudicating Verpoorten's claim, the courts were clearly of another opinion. The judges, specifically Francois Fagel of the High Court, who reported on the case, referred to Articles 33 and 34 to underpin their verdict.[91] Charter Article 33 indicates that the directors had to secure "their administration" with sums of money in the company, that is, their investments in the chamber of which they were director. It was that sum which was a guarantee in case a director was not able to fulfil "that which had been entrusted to him in his administration."[92] This was interpreted by the High Court judges to be collective, not individual – that is, it was not Clement alone who was held financially responsible for the payment to Verpoorten *et al*, but the chamber directors collectively. Article 34, mentioned earlier, specified that the chamber directors were liable for their accountants and bookkeepers. The same provision in the VOC's charter was enforced by the court's verdict in the cases between van Hatting, Coninck and the VOC Chamber Zeeland discussed in Chapter 5. The Middelburg Court's sentence in 1661 and the High Court's verdict twelve years later held the chamber directors as a group responsible for the sum owed to Verpoorten *et al* for the Portuguese sugar which had been entrusted to the company to sell at auction.

In the cases between Jan Maertens' heirs and the VOC Chamber Zeeland and Laurens Verpoorten and the WIC Chamber Zeeland, the men involved in making purchases from the companies were chamber directors themselves. Both men went bankrupt before paying for their merchandise. In the VOC case, Maertens' debt was to the company, and following their normal procedure for dealing with shareholder debt, the chamber sold off his shares to make good in part the outstanding sum. However, the court ruled in favour of the heirs who claimed preference in the payment of their inheritance over company debt. In terms of liability, this can be interpreted as a ruling against the inheritability of debt – the heirs' portions were not prejudiced by Maertens' debt. In the case over the prize sugar sold by the WIC, the question of liability was at the forefront of the arguments made. The charter was used as the foundation of the arguments for both sides – that the chamber directors were liable for the sum owed to Verpoorten *et al*, and that they were not liable for the sum. The critical distinction to make in the case was whether the sum owed to Verpoorten after the sugar sale was in fact Clement's personal debt for the purchase, or the chamber's debt for having taken on the sugar to sell at

[91] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *655* (1673) Resoluties, scan 165. On Fagel's career see: http://resources.huygens.knaw.nl/repertoriumambtsdragersambtenaren1428-1861/app/personen/3578 (accessed 2017-12-06).

[92] Original: "*tgene hem synder administratie aengaende, vertouwt waere*." Article 33 (1621) in Laet, *Iaerlijck Verhael*, 18. It was this same article which set out the provision for using shares in the chambers as collateral against the goods purchased from the chambers, which was analysed in VOC cases in Chapter 5.

auction. The judges did not allow the chamber directors to hide behind some idea of limited liabilty. The court ruled that Verpoorten did not have to make a claim against Clement's insolvent estate; rather the chamber directors together were liable for the debt to Verpoorten for the boxes of sugar.

Property rights, prize and seizure of goods

It was the same sweet luxury that was at the centre of property rights disputes between merchants, both subjects of the States General and foreigners, and the WIC. Goods brought back to the Republic by Atlantic traders – as private merchandise, or prize – and sold by the WIC were catalysts of conflicts that were pursued to the High Court where ownership of the goods, or the rights to the proceeds from sale, was adjudicated. Each of the three cases analysed here brings a different element of the same core problem to light, namely the problem of property rights. The first case considered whether or not the company's charter imbued it with the right to seize sugar which had already been sold in the Republic, but was suspected of being the boon of illegal trade. The 'good faith' of the buyer was central to the court's considerations. The second case dealt with alleged seizure at sea of gold and tusks which had been on board the Amsterdam vessel the *Witte Duijff.* Was the company entitled to sell the goods on the grounds of confiscation of illegal trade goods? Or had the gold and tusks been transported to the Republic as a favour to the stricken vessel? The legality of the *Witte Duijff*'s expedition was an important determinant in answering these questions. The final case brings to light issues of subjection in a prize case. The WIC got involved in the case at a late stage because its claim to recognition fees was under threat if the goods which had been sold at auction on behalf of private merchants were not in fact legitimate prize. Subjection in prize cases was a very important factor because the subjecthood of the merchants determined the 'nationality' of the goods.[93] I will argue that the court's rulings in these cases limited the predatory nature of the company over the goods of private merchants.

WIC Chamber Maze vs. Pieter Baelde

Pieter Baelde, merchant in Rotterdam, and the directors of the WIC Chamber there disputed rights over sugar which had been seized in Gouda. While the chamber directors alleged that it was the product of illegal trade, Baelde claimed that goods bought in good faith could not be seized by the company.

The Chamber directors alleged that Lucas Ostdorp breached Article 43 of the 1674 charter, renewed in 1700. Specifically, he sailed to the Guinea coast, where he traded in slaves and other goods and then sailed across the Atlantic. *De Vier Gebroeders* sold her

[93] Antunes and Roitman deal with the case of disputed property rights over sugar which involved subjection and citizenship of the Portuguese nation in Amsterdam. The authors conclude that they were able to defend their property rights, in part due to the clout that they and their associates wielded in economic and political circles. Antunes and Roitman, "A war of words," 25.

merchandise in the Americas, "in the district of the Company."[94] Other sources indicate that *De Vier Gebroeders* sold her human cargo at St. Eustatius, where Commander of the island Isaac Lamont tried to have the ship and crew arrested for illegal trade, but the fiscal and sergeant were reportedly so drunk that nothing could be done. As a result, *De Vier Gebroeders* continued her illicit activity.[95] The vessel's next stop was the island St. Thomas where she took in sugar and cotton which was shipped back to the Republic, arriving in Harlingen, Friesland.[96] The Chamber directors arrested the ship on 4 August 1702, most likely putting it under chains, but sugar had already been transhipped and was on its way to Vlissingen, allegedly addressed to Nicolaas van Hoorn. The lighters carrying the sugar were stopped at Gouda on 7 or 8 August. Pieter Baelde, recorded as a merchant in Rotterdam, opposed the seizure of the sugar on the grounds that he had already purchased it. He contended that he had bought the sugar in good faith (*bona fide*) without inquiring as to the legality of its provenance. Baelde claimed that he purchased the sugar on 30 July 1702 – which predated the initial arrest of the ship at Harlingen and the later arrest of the lighters at Gouda. Baelde and the Chamber directors came to an agreement before notaries on 13 August, by which it appears that Baelde redeemed the sugar for a ransom payment of *f*16,000 deposited in the Rotterdam exchange bank.[97] This likely meant that neither party had to concern itself with whether or not the sugar was getting spoilt while they disputed ownership over it. After disagreeing in the lower courts about which court should adjudicate who could draw the *f*16,000 from the bank, the parties were ordered to arbitration where they agreed to a first instance case in the High Court.[98]

In the High Court, Pieter Baelde's lawyer, referred to as *Procureur* Oulry, made two arguments in the case which were very significant, the first relating to the narrow question to adjudicate, and the second to Baelde's involvement in *De Vier Gebroeders*'s expedition. Firstly, Baelde's lawyer emphasised that the question to adjudicate was whether or not "permitted merchandise" purchased by a merchant could be seized under any pretext.[99] The judges reiterated this narrow focus on the good faith purchase in their resolution which accompanied the sentence. Judge Reinier Schaep was explicit about this point: the question of whether or not illegal trade had been committed against the company had to be left aside and the question at hand related only to whether or not a good faith buyer of goods of dubious provenance was subject to being summoned to

[94] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *797* (1705), Geextendeerde Sententie, scans 162-3, ff. 161r-v.
[95] Paesie, "Lorrendrayen op Afrika," 253, 268.
[96] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *663* (1705), Resoluties, scan 204.
[97] This is reminiscent of the ransom paid by Sephardic merchants who redeemed sugar taken prize by Dutch privateers from a Portuguese vessel. The quantities in that case were enormous, and there were certainly other issues at stake in that case, notably citizenship and subjection. See Antunes and Roitman, "A war of words," 25-32.
[98] The West India Company chamber directors are recorded as first, plaintiffs in appeal and now, claimants in first instance in the court documents. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *663* (1705) Resoluties, scan 204; inv. nr. *797* (1705) Geextendeerde Sententie, scan 162, ff. 160v-161r.
[99] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *797* (1705) Geextendeerde Sententie, scans 169-70, ff. 168r-v.

court.[100] As Douglass North has pointed out, Roman, Germanic and common law did not protect buyers against claims made by the original owner of lost or stolen goods which a merchant had unknowingly purchased. However, under merchant law, North says, the honest buyer was protected – he was allowed to keep the goods or could return them in exchange for reimbursement of the original purchase price. According to North, a vitally important shift took place between the thirteenth and seventeenth centuries as regards good faith purchases: at the earlier date, goods with a suspect chain of ownership had to be returned by the good faith buyer but by the early 1600s, "the final (good-faith) purchaser of a good was recognized (in certain but not all courts) as having the only viable title to the good" and thus prior claims were wiped out.[101] The very existence of merchant law, or *lex mercatoria*, is a matter of disagreement among (legal) historians. There is no reference to such law, nor to common practice or customary law in the case between the company and Baelde. But the High Court judges adjudicated the case in favour of the *bona fide* buyer, namely Baelde. The High Court sentence recognised his rights to the sugar and the judges ruled that the WIC charter did not give provision for the company to seize goods once the sale had been completed, even if the goods in question were from illegal trade. According to the court, the company's legal rights in the case of illegal private trade related only to the ship, shipowners and investors.[102]

In light of this, *Procureur* Oulry's second point was also very significant. He emphasised that Baelde was not involved in the illegal voyage out of which the sugar originated. Baelde, he contended, "must be considered simply as a merchant who had bought available goods" and furthermore, it was not Baelde's responsibility as buyer to inquire whether the sugar was acquired by legal or illegal means.[103] He even claimed that the company was well aware that Baelde had not been involved in *De Vier Gebroeders*'s voyage, not as captain, owner, nor investor.[104] While this argument may have been enough to convince the court, it is highly unlikely that it was in fact true. Other sources record Baelde as one of the owners of *De Vier Gebroeders* along with Abraham Beck and Nicolaas van Hoorn.[105] Pieter Baelde made his career as the person who connected Holland and Zeeland merchants involved in illegal private trade. Baelde, from Rotterdam, maintained contact with Pieter de la Rue and Hendrik van Dusseldorp, the illegal private traders who featured in Chapter 3. He was involved in the rubber trade as well as the slave trade. When the Middelburg Commercie Compagnie (MCC) was set up in 1720, Baelde became one of the major shareholders (*hoofdparticipant*).[106]

The judge who reported on the case to his colleagues, Rutgert Verbrugge, was of the opinion that the chamber directors' claim should be denied but that their right to legal

[100] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *663* (1705) Resoluties, scan 204.
[101] North, "Institutions," 31-32, quote 32.
[102] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *663* (1705) Resoluties, scan 204.
[103] Original: "*simpelijk moet aangesien werden als een coopman die vrije goederen heeft gekogt*." NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *797* (1705) Geextendeerde Sententie, scan 170, f. 168v.
[104] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *797* (1705) Geextendeerde Sententie, scan 171, f. 169v.
[105] TASTD: http://www.slavevoyages.org/voyages/FXU9i7D0 (accessed 2017-11-18).
[106] Paesie, "Lorrendrayen op Afrika," 371 (Bijlage II), 129, 134.

action against the shipowners should be reserved, that is, permitted in future. His fellow judges were in agreement. Adjudicating only the sugar sale, the bench agreed with Verbrugge's recommended sentence. On 19 December 1705 they pronounced the sentence: WIC Chamber Maze's claim was denied, Pieter Baelde was allowed to collect the *f*16,000 from the Rotterdam exchange, and the chamber directors had to pay the court fees.[107] This ruling protected the good faith buyer from seizure of his goods. While the judges agreed that the sugar was the product of illegal trade, they indicated that the WIC charter gave the directors no rights in regards to buyers of illicit trade goods. The company's legal action was restricted to the shipowners and investors in illegal enterprises. [108]

The company took up the opportunity to pursue their rights against the shipowners. Thus it was in 1707 that the High Court sentenced a case between the directors of the WIC (no chamber specified) and none other than Nicolaas van Hoorn, alleged sugar recipient and the owner of the vessel *De Vier Gebroeders*. In the proceedings the company directors concluded that van Hoorn, as owner of the vessel *De Vier Gebroeders*, should be sentenced by the court to pay the company the value of the sugar which he had sold to Pieter Baelde. The basis for this conclusion, the company indicated, was their charter, pointing to the procedures in place to deal with monopoly breakers. For his part, van Hoorn disputed the competence of the High Court to deal with the breach of Article 43 which was in question, and submitted that the case should be transferred (*renvoij*) to the Admiralty court in Zeeland, seeing as he was an inhabitant of that province. The judges of the High Court were not in agreement over the question of which court was competent to deal with the charter breach, with some, including the president, saying the case should remain before the High Court, others being of the opinion that the competent judge was the court in Vlissingen.[109]

WIC Directors vs. freighters of the *Witte Duijff*

During the 1650s the WIC got involved in a case of disputed ownership of African gold and tusks which had been brought to the Republic in WIC ships and sold at company auction. The goods had been transhipped from a vessel named *Witte Duijff* off the African coast. The freighters of that vessel (*gemeene bevrachters*), who were not named in the legal proceedings, sued four men, namely Aelbrecht Pater, Eduart Man, Abraham Wilmerdonck and Hans Bontemantel, who were all directors in the WIC Chamber Amsterdam.[110] The four men were the signatories of the bottomry letters

[107] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *797* (1705) Geextendeerde Sententie, scan 171, f. 170r. The total cost is unknown but the High Court's December 1705 resolution alone cost the losing party *f* 50. NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *663* (1705) Resoluties, scan 204.

[108] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *663* (1705) Resoluties, scan 204.

[109] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *664* (1707) Resoluties, scans 48-9.

[110] The sentence records them as directors but without specifying a chamber. According to Data VIDI, Pater and Man were directors in Amsterdam. We can assume from the case details that Bontemantel and Wilmerdonck were directors in the same chamber. On Bontemantel's civic offices in Amsterdam, see Molhuysen, Blok, and Kossman, *NNBW*, 8:175-179.

(*bodemrijbrieven*) on which the sale of the goods was made.[111] The WIC chamber directors intervened in the case at a later stage, so that by the time proceedings reached the High Court, the records show that the appellants were the directors of the West India Company for themselves, and having intervened on behalf of Pater, Man, Wilmerdonck and Bontemantel.[112]

The *Witte Duijff* sailed under commission from the WIC, by which they had permission to trade on the Barbary Coast. What was disputed was whether or not they had exceeded the limits of the commission which they had received. This had implications for the goods that had been shipped to the Republic, specifically whether or not they had been traded legally or illegally.[113] What was at stake in the case was property rights over the gold and tusks which had been brought back to the Republic.

Each party told a different story to explain why the *Witte Duijff*'s cargo of tusks and gold was on board the company ships and how that related to rights over the goods. The freighters claimed the company had done the stricken *Witte Duijff* a favour by transporting the goods on her behalf. In contradiction, the company pointed to breaking the terms of the commission, and breaching the WIC monopoly, as the grounds for sale of the goods in the Republic. The freighters claimed that the WIC chamber Enkhuizen granted them permission for a trading voyage on the coast of Africa. They readied their vessel which then set sail in August 1654. Very soon, the crew realised the yacht had a leak. Off the coast of Sierra Leone, the *Witte Duijff* encountered a ship which belonged to the Duke of Courland, the captain on board of which offered assistance which was accepted by the *Witte Duijff*.[114] The crew were unsuccessful in stopping the leaks and purchasing slaves off the coast to relieve the mates from pumping the leaky vessel was not a long-term solution. The *Witte Duijff* would not manage the return journey. In the Gulf of Guinea she encountered two WIC ships, the *Graeff Enno* and the *Prins Willem* as well as a vessel with commission from Amsterdam named *Blauwe Eenhoorn.* The *Witte Duijff*'s cargo, which amounted to 747 elephant tusks and 31 Mark 13 Engels (approximately 8kg) of gold was transferred into the two company ships to be sailed by them to the Republic. The *Witte Duijff* apparently promised to pay freight fees for shipping the goods. When the freighters heard that the *Graeff Enno* and *Prins Willem* had arrived in Amsterdam, and that the WIC was planning on auctioning off all the cargo, the freighters sought and obtained permission from the Court of Holland to place the goods under

[111] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *756* (1664) Geextendeerde Sententie, scans 133-4, ff. 132 r-v.

[112] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *756* (1664) Geextendeerde Sententie, scan 125, f. 124r.

[113] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *756* (1664) Geextendeerde Sententie, scan 126, f. 124v.

[114] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *756* (1664), Geextendeerde Sententie, scan 126, f. 125r.

arrest.[115] The freighters' claim was that the company be sentenced to return the goods or the proceeds from the auction, plus the cost of damages and interest.[116]

The WIC story was quite different, focussing instead on the illegality of the *Witte Duijff*'s activities on the coast. The company directors pointed to the powers granted it by charter to confiscate ships and goods which were operating in the charter area of the WIC without the consent of the company. Contravention of the monopoly charter "was of such pernicious consequence" the directors pointed out, that the States General had granted the company the right to sell the goods and ship which had been confiscated, and if the illegal trading vessels went to other lands or harbours, the company could force the shipowners and investors to fulfil the value of the ship and goods.[117] The company ship *Graeff Enno* was on her way back to the Dutch Republic when she encountered the *Witte Duijff* off Cape Lopo Gonsalves (Gabon). The factors and skippers found out that the *Witte Duijff* was in fact a vessel from Amsterdam. Furthermore, they found out that the *Witte Duijff* had been conducting trade along the Gold Coast where she traded iron bars and other goods for gold and tusks. In accordance with the WIC charter, the *Graeff Enno* and the vessel accompanying her took the gold and tusks onboard.[118] But the directors could not make the claim that the goods had been confiscated from the *Witte Duijff* with any confidence because the *Witte Duijff* had not been declared good prize in court. The WIC authorities on the West Coast of Africa, who referred to the *Witte Duijff* as an "Amsterdam Interloper", recorded that the gold and tusks on board and the ship itself "was confiscated."[119] However, the Gentlemen Nineteen, in their letter to Director on the coast, Jacob Ruychaver, lamented that there had not been legal proceedings against the *Witte Duijff* in Elmina to sentence the ship as an illegal private trader. This, the Nineteen hinted, complicated the legal proceedings in the Republic. They wrote:

> The persons interested in the yacht "Duyff", which was seized by the ships of the Chambers Amsterdam and Zeelandt... have sued us before the Court of Holland, in order to have restitution of the aforesaid return cargo, to which we shall not neglect to make our proper defence; but we had well wished that that yacht had been confiscated by the sentence of the Y[our] H[onours] and the Councillors there, as the Factors and skippers, being on a voyage, do not appear to be qualified to do it. Consequently, we are making no mention of the aforesaid confiscation, but stand alone upon the merits of the case, in principle.[120]

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[115] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *756* (1664), Geextendeerde Sententie, scans 125-9, ff. 124r-128r

[116] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *756* (1664), Geextendeerde Sententie, scan 130, f. 129r.

[117] Original: "*van soo een perniciuese consequentie*." NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *756* (1664), Geextendeerde Sententie, scan 131, f. 130 r.

[118] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *756* (1664) Geextendeerde Sententie, scan 132, f. 131 r.

[119] Furley, The Gold Coast 1653-1655, N6, 170-2 (quote 171) [2 April 1655].

[120] Furley, The Gold Coast 1653-1655, N6, 153 [Copy letters from the deputies of the XIX WIC: 1 September 1655 to Jacob Ruychaver].

The 'proper defence' which the chamber made in the courts in the Republic thus could not rely on a sentence passed by the company court in Elmina.

Proceedings began in the Court of Holland, as indicated in the Nineteen's letter. On 22 December 1662, the Court of Holland pronounced their sentence. The WIC was sentenced to return the 747 tusks and gold to the shipowners, or reimburse the value of the goods. This sentence was passed by the *Heeren en meesters* Johan Dedel, Frederik Dorp, Dirk Sixti, Gualter de Raed, Albert van Nierop and Cornelis Fannius.[121] But neither party was entirely satisfied with the sentence: the WIC directors appealed the sentence in the High Court, seeking that it be overturned; the freighters submitted their *grieven a minima* in so far as the denial of their interest and damages claim.[122] The High Court bench upheld the sentence of the Court of Holland, considering neither side to have been aggrieved by it. Furthermore, the court decided that the WIC would retain the right to claim freight costs or recognition fees from the owners of the *Witte Duijff* for transporting the tusks and gold from Cape Lopo Gonsalves to Amsterdam but the company had to pay the costs of the legal proceedings which the 14 May 1664 sentence had brought to a final close.[123]

Both the Court of Holland and the High Court recognised the rights of the freighters of the *Witte Duijff* over the gold and tusks which had been transported by the WIC to the Republic and then sold by the company. In so doing, the court surely dealt a blow to the WIC's already dwindling monopoly. The 'Amsterdam Interloper' was protected from the company's right derived from its charter to confiscate goods and ships of monopoly-breakers. In this particular case, the fact that the company officials on the coast had not instituted legal proceedings against the vessel weakened the company's position in the Dutch courts.

The *Eduard* and *Zeeuwsche Leeuw*

Legal ownership of goods was also the issue which brought the WIC Chamber Zeeland to court in the 1650s. The dispute arose over sugar and tobacco, loaded in Brazil onto a vessel from Lisbon, which was then taken prize by a Zeeland privateer. As Charles Boxer pointed out, the insurrection against the Dutch in Brazil which began in 1645 led to an increase in Dutch attacks on Portuguese vessels in the Atlantic. West India Company cruisers and to an even greater extent Zeeland privateers inflicted damage on the Portuguese fleet; between January 1647 and December 1648 Charles Boxer states that approximately 220 Portuguese Brazil trade vessels were captured. As a result, "substantial quantities" of sugar were shipped to the Republic, and the WIC profited by

[121] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *756* (1664) Geextendeerde Sententie, scans 139-40, ff. 138r-v. The names have been rendered in the spelling used in the *Repertorium van Ambtsdragers*. http://resources.huygens.knaw.nl/repertoriumambtsdragersambtenaren1428-1861/app/aanstellingen/by?aanstelling.instelling=84&aanstelling.functie=27 (accessed 2017-10-25).

[122] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *756* (1664) Geextendeerde Sententie, scan 140, f. 139r.

[123] NL-HaNA, Hoge Raad van Holland en Zeeland, 3.03.02, inv. nr. *756* (1664) Geextendeerde Sententie, ff. 140r-v.

taking a percentage of the prize.[124] Privateering continued into the 1650s, the early years of which were a period of uncertainty regarding the legitimacy of prizes. Between 1649 and 1653 there was no truce between the Dutch and Portuguese, nor was there a final treaty. The following year the Dutch colony in Brazil was definitively lost to the Portuguese. But it was only in 1661 that a final treaty was drawn up, and then ratified the following year.[125]

It was in this context that Captain Jan Daniels departed Lisbon for Cape St Augustine (Cabo Santo Agostinho) in Portuguese Brazil, on board a vessel named *Eduard.* In Portuguese Brazil, he took on board 500 chests of sugar, and at least four rolls of tobacco, perhaps other goods too, for the account of Portuguese and English merchants resident in Lisbon. On the return journey, the *Eduard* encountered a hostile Dutch ship in the vicinity of the Azores. The vessel was Captain Lambert Bartelsz's (*Roode*) *Zeeuwsche Leeuw.* Bartelsz was a privateer: he had letters of reprisal (*brieven van repressallien*) against the Portuguese granted by the States General, and commission from the WIC, so it comes as no surprise that he readied his men for a battle against the *Eduard*. Jan Daniels too, claimed that he was ready to fight, however, his officers and crew considered it prudent to rather agree to terms of surrender with Bartelsz which they did on 22 May 1650. The *Eduard* and the *Zeeuwsche Leeuw* sailed for Vlissingen, and after arrival there the sugar and tobacco was unloaded from the vessel and the goods were (going to be) sold at company auction. Jan Daniels heard about the impending sale of both the Portuguese goods loaded on the ship, as well as those for the account of the "English nation" in Lisbon, against which he protested by means of a warrant of seizure for the English. Bartelsz and the chamber did not heed the arrest and sold the goods at auction anyway. In response, Jan Daniels summoned the WIC Chamber Zeeland to court.

Interestingly, the foreign merchants chose to begin legal proceedings in the city court in Vlissingen. As foreign merchants, they would have been allowed to begin proceedings in the High Court. However, they chose not to. In addition to Daniels, the other claimants in the case in the city court were men, and a woman, on whose accounts 42,5 of the chests of sugar on board the *Eduard* had been transported. The Vlissingen Court passed a verdict on 26 October 1655 which Daniels *et al* considered to be a misjudgment, and so they appealed the case. It appears that the foreign merchants bypassed the Court of Holland and appealed the Vlissingen verdict in the High Court. This may have been allowed because of their foreignness. Moreover, that they were foreign meant that they received lenience from the court insofar as the rules of beginning an appeal were concerned. They had in fact taken too long between the verdict of the lower court and lodging their appeal with the High Court, but the High Court overlooked this, attributing their tardiness to their "foreignness" (*uijtlandicheijt*) and ignorance of the legal system, and allowed their appeal. The High Court granted them leave to appeal in September 1658. For three and a half years the High Court dealt with the matter: the parties swelled and their lawyers explored legal avenues, before the judges passed their

[124] Boxer, *The Dutch in Brazil*, 201-203.

[125] Thanks to Cátia Antunes for pointing out this important context. On the loss of Dutch Brazil, see ibid., 240-241.

verdict in February 1662. They overturned the Vlissingen court's sentence and instead ordered Bartelsz, his associates, and the Chamber Zeeland to return the 42,5 chests of sugar and four rolls of tobacco to Daniels *et al* or pay them their value plus interest dating from the time legal proceedings began in Vlissingen.[126]

The Chamber Zeeland was involved in the case because of the commission it had granted to Bartelsz but the chamber joined the defendants when the case was being heard in the High Court. The matter which was at stake for the chamber was the recognition fee owed for the goods which Bartelsz brought to the Republic.[127]

The most interesting of the legal arguments revolved around subjection. How the courts in the Republic dealt with foreign litigants has been a reocurring theme throughout the chapters. In this particular case over the boxes of sugar and tobacco, whether the merchants on whose accounts the goods were shipped were Portuguese or English was the important question. If the members of the English Nation in Lisbon were considered subjects of the Portuguese Crown, then their goods could be claimed as prize under the letter of reprisal which Bartelsz carried. However, if the merchants were in fact considered English – which was the argument that they made to the court – then their goods could not be sold off as legitimate prize.[128] In the end, the court must have concluded that the English Nation in Lisbon were not in fact subjects of the Portuguese Crown. The court ordered the sugar and tobacco be returned to the merchants. The merchandise was specified as belonging to ten individuals, one of whom was an English noblewoman resident in Lisbon, Johanna Veere, to whom a half chest was due, and another of whom, on whose account there were eight chests, was Johan Busschel.[129] The latter was most likely the court's rendering of the name John Bushell, brother of Edward, who was in this period the Brazil Company's London agent.[130] Not only is it striking to see the detail of the judges' consideration of the subjection argument – who was born where and the implications thereof – but furthermore, in their judgment, the High Court bench protected the rights of foreigners against subjects of the States General and the WIC.

Surprisingly, at no point in the sentence or attendant resolution is the term 'prize' used in reference to the goods. Perhaps the framing of the case in terms other than prize was a means of avoiding the problem of jurisdiction. The jurisdiction of the Admiralty court over such a case should have been clear cut: prize cases were adjudicated by the Admiralty in the port in which the goods entered the Republic.[131] The involvement of foreigners, surely common in prize cases, should not have complicated the Admiralties'

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[126] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *754* (1662) Geextendeerde sententie, scan 43, 48, ff. xLi v, xLvi v-xLvii r.

[127] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *754* (1662) Geextendeerde sententie, scan 58, ff. Lvi v-Lvii r.

[128] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *754* (1662) Geextendeerde sententie, scans 45-6, 54-5, xLiiii r-v, Liii v- Liiii r.

[129] NL-HaNA, Hoge Raad Holland en Zeeland, 3.03.02, inv. nr. *754* (1662) Geextendeerde sententie, scan 47, f. xLvi r.

[130] Leslie M. E. Shaw, *The Anglo-Portuguese Alliance and the English Merchants in Portugal, 1654-1810* (Aldershot: Ashgate, 1998), 116.

[131] Prior to the creation of the Admiralties, prize cases were heard in multiple courts, including the Court of Holland and the Great Council of Malines. Reine and Oest, *Kapers*, 24.

jurisdiction. Yet, the case between the captains was heard in first instance in the Vlissingen city court and sentenced by the burgomasters and aldermen of that city. Cases such as this one indicate that further research on Admiralty jurisdictions is necessary to more thoroughly understand the workings of the legal system in the Republic.

Conclusion

Disputes over property rights constitutes the final of the five types of conflicts which were pursued against the companies in the courts of the Republic. In the judges' decisions, property rights of merchants, or heirs, subjects of the States General and foreigners, were secured from the predatory tendencies of the companies. Both the VOC and the WIC chamber directors were involved in property rights disputes. That these cases involved directors of the chambers as litigants can be explained by the decentralized structure of the companies in which the sale of colonial imports was a chamber matter. As recounted in this chapter, the company chambers sold off colonial imports of three types – company goods, private traders' goods, and prize handed over to the chambers.

If we look at the colonial imports over which property rights were disputed, we can identify differences between the VOC cases and the WIC cases. The three VOC cases unsurprisingly revolved around spices purchased from the chambers. The first of these, involving the Amsterdam merchants van Erpicum, took place in the 1620s and 1630s, a time when control of the market by directors and a small group of merchants was causing conflict in the company. The two cases of preference which involved the heirs of Jan Maertens' estate were traced back to his purchase of spices from the chamber in 1694, for which he still owed the chamber Zeeland money. The company policy of selling shares to make good on the debt of shareholders, which also came to the fore in the Bartolotti case (Chapter 5) was not the matter that was disputed; whether the company could do that prior to heirs receiving their inheritance was the issue which the Insolvency Chamber in Middelburg ruled on. The decision was that the Chamber Zeeland was not a preferential creditor before the heirs.

The WIC cases in this chapter had a somewhat different composition. The WIC faced cases relating to property rights over goods which had been seized at sea and sold in the Republic, or shipped to the Republic by private merchants and later seized by the company. That the WIC cases had more to do with private merchants' trade in the WIC charter area comes as little surprise given the way in which the WIC leased out its monopolies over time, and what we know about the extent of illegal private trade in the Atlantic (Chapter 3). In these cases, the court's ruling secured the rights of the merchant who ostensibly bought sugar in good faith, the private trader who delivered goods to the chamber to be sold, and the foreign merchants whose goods had been seized at sea and delivered to the company to sell in the Republic.

Business failure featured in a number of the cases in this chapter. The two cases involving Jan Maertens' heirs, sentenced by the High Court in 1702 and 1703, dealt with the matter of preferential claimants. The court ruled that heirs, Anna Becx and Clara Maertens, should receive their inheritance before the company chamber could sell Jan

Maertens' shares to make good on the debt he owed the chamber for spices bought from the company. The VOC chamber's claim was relegated by the Insolvency Chamber in Middelburg which verdict, in each case, the chamber appealed first in the city court and then directly in the High Court. In the WIC case that dealt with the bankruptcy of a director-purchaser, the court protected the merchant who had handed over goods to the chamber to sell. Instead of having to make a claim from the director-purchaser-bankrupt's estate, Laurens Verpoorten should receive payment for the goods he handed over to the chamber from the chamber itself. In this way the court held the chamber directors responsible for the sum owed to Verpoorten. The chamber would then have to recover Clement's debt to the chamber from his insolvent estate. The court did not allow the directors to hide behind their limited liability and thus not take financial responsibility for the goods sold by the chamber.

The High Court upheld the rights of the good faith buyer. Protection of his rights came at the expense of the WIC and its opportunities to enforce its monopolies. Good faith purchase provided a means of turning illicit goods into legitimate goods over which the company had no rights. While the company thus lost out on the proceeds of those goods which, had they been seized from the illegal traders themselves would have been sold for the company's profit, the directors' rights to prosecute the illegal traders themselves remained intact. The court ruled that the company's charter did not give it blanket permission to seize goods which were the product of illegal trade. Furthermore, in the case involving Baelde, good faith was the legal principle behind which the illegal traders hid their real activities. Other sources indicate that Baelde was more than the buyer of the sugar; he was himself involved in the voyage. The judges were not aware of this cunning. Their ruling in the case between Baelde and the WIC protected the rights of the good faith buyer from WIC seizure of illegal trade goods in the Republic.

In addition to the good faith buyer, the High Court protected foreigners' property rights. This was the outcome of the sugar and tobacco case, in which the directors of the WIC had intervened when it was before the High Court bench. In order to determine whether or not the goods had been taken legitimately at sea, the judges weighed up the legal position of the merchants in Lisbon: were they English or were they Portuguese? This was a consequent question, as it determined the 'nationality' of the goods and following from that, the legitimacy of the seizure and subsequent sale at company auction. That the High Court was accessible to foreigners, as it was in this case, is not surprising, given the competence of the court, as discussed in the Introduction. But what this case adds is a glimpse of how foreignness brought the litigants advantages. If it was likely that their foreignness meant they were allowed to appeal the verdict of the city court directly in the High Court, then it was certainly their foreignness which brought leniency with regards to the timing of this appeal. The High Court granted them leave to appeal the verdict of the lower court even though according to the rules for proceeding in appeals, the claimants' window of opportunity had closed.

When we consider the way in which the cases were pursued to the High Court, it is difficult to establish a pattern. The case involving the merchants van Erpicum followed the trajectory set out in Figure 2; the case started in the city court in Delft, was appealed

in the Court of Holland, and again in the High Court. It seems that this was the only case regarding property rights which followed this trajectory. While this was the general line of the case, the High Court sentence revealed the proliferation of related disputes in other courts, which is a reminder of the legal opportunities that people had in the cities in Holland and Zeeland. What comes to the fore in other cases is that litigants bypassed the Court of Holland when proceeding in the High Court. The Maertens heirs' cases confirm that Insolvency Chamber sentences were appealed in the city court, which the VOC Chamber Zeeland did in both cases, but from the city court the chamber appealed directly to the High Court. The WIC did the same in the case relating to the debt owed to Verpoorten. That bypassing the provincial court was not unique to the VOC and the WIC is revealed in the subjection case involving English merchants from Lisbon. The foreign merchants appealed the verdict of a city court directly in the High Court. Perhaps their foreignness is the key to understanding the progression of that case.

When taken together, the cases illuminate some aspects of the market in the Republic for colonial goods. But much research remains to be done in this direction. Until recently, the sale of colonial imports – how, to whom, buyers' market position and political influence, and the resale of such goods to refiners and for re-export – has not been the focus of much research.[132] This chapter demonstrates that in addition to the companies' own records, legal disputes in the courts of the Republic are a rich source for research on the contours of the market for colonial imports in the Republic.

The High Court judgments in the cases examined here protected property rights when they were disputed in cases which arose from buying, selling and seizing colonial imports. In so doing, the legal institutions limited the predatory tendencies of the companies, and facilitated the global trade of the Dutch economy. That these rights were being secured over the course of the seventeenth and eighteenth centuries was crucial for the functioning of the economy in the Republic in which international trade played such an important part.

[132] Fatah-Black and de Windt point out that this lacuna is particularly surprising. Fatah-Black and Windt, "De architecten," 1.

Conclusion

The Dutch East and West India Companies courted conflict in the Dutch Republic. Overseas expansion, as it was undertaken by the two companies, led to conflicts which were managed in the political and legal institutions in the Republic. As legal disputes unfolded, both companies summoned parties and were themselves summoned to the High Court in The Hague. The conflicts that were heard in that court related to all aspects of the companies' business: suits over entrance into their charter areas, matters relating to private trade, wage claims, ownership of shares, and property rights related to colonial imports. These issues were pursued by a wide range of litigants: individual and corporate, 'local' and foreign, men and women. Some of these disputes arose out of events and activities in the Republic; others were rooted in the companies' charter areas.

Explaining why cases were heard in the High Court requires a wide view of the institutional landscape, *in patria* and in the charter areas. Such a view encompasses dispute management which, at least initially, did not involve litigation. This broad approach is shaped by recent work in the field of legal history. Scholars have introduced the importance of taking a wider view of how commercial conflicts were handled rather than looking only at the resolution of disputes. Alain Wijffels, Justyna Wubs-Mrozewicz and Louis Sicking have urged fellow researchers to take on the idea of conflict management. Conflict resolution through formal judicial procedures including litigation is one element, they contend, of a wider spectrum of choices and opportunities in the process of managing a dispute, that is setting the terms on which business can continue. The conflict management approach takes cognisance of the fact that the cause of the conflict – the underlying conflict of interest – is not necessarily resolved, even via conflict resolution mechanisms which ostensibly end disputes. Conflict management encompasses formal and informal mechanisms of dealing with disputes which were used in various fora. In the preceding chapters, this concept was fruitfully applied to understanding how litigants and the Dutch companies managed disputes in the early modern period. Some cases showed that the dispute between parties was long-running, and had been managed by political bodies, notably the States General, before the matter was heard in the courts, and in some conflicts afterwards too.

There was a multiplicity of routes into the High Court in The Hague. In the legal framework of Holland and Zeeland, cases could begin in and progress from city courts, to the Court of Holland and then to the High Court, as set out in Figure 2. High Court sentences were final, but could undergo revision by a bench constituted by the Sates of Holland. In addition, the High Court sentences revealed that sentences passed by the Insolvency Chambers of Amsterdam and Middelburg were appealed first in the city courts, and then in a higher court. On the basis of practice then, we can see the use of the specialised courts and their subsidiary place in the hierarchy of courts. Moreover, the legal principle of *omisso medio* was not followed strictly. *Omisso medio* should have meant that cases which began in city courts were appealed in the Court of Holland. Yet, there was

a surprising number of cases in which one of the parties appealed a sentence of a city court directly in the High Court, that is, bypassing the Court of Holland entirely. Both the VOC and WIC Chamber directors appealed city court sentences in the High Court. While we might be inclined to think that bypassing the Court of Holland was a privilege granted to the companies, this was not the case. It was not only the companies who bypassed the Court of Holland when appealing cases in the High Court; opposing parties did it too. Within the exhaustive list of VOC and WIC High Court cases, there is no discernible pattern regarding when *omisso medio* was waived.

Explaining why certain cases were heard in the High Court required looking beyond the Republic's shores to the legal systems established by the companies. This research has illuminated the relationship between the courts in the Republic and the VOC and WIC courts which those companies established in their charter areas. The States General played a crucial role in that relationship. This was in part due to the fact that it was the States General that delegated sovereignty to the two companies which granted them the authority to set up legal systems in their charter areas. This included establishing courts, appointing legal personnel, and writing law.

The legal systems that were established in the Indian and Atlantic Oceans differed considerably in the shape that they took, and in their relationship with courts in the Dutch Republic. Soon after the VOC established Batavia as the headquarters of the company in Asia, the company set up the Council of Justice there which emerged not only as the highest court in Batavia, but as the appellate court in the VOC's legal system. The company was strongly centralised in Asia, focussing on Batavia as the administrative and legal centre. In theory, cases sentenced by Councils of Justice elsewhere in the company's network of towns could be appealed in the Council of Justice in Batavia. Batavia was the top point of the VOC's trans-oceanic legal hierarchy which was insulated from the legal system in the Republic. From the company's court in Batavia, cases could not be appealed in the Republic. In at least parts of its charter area then, the VOC was ruler and final judge. High Court records show that cases were not appealed directly in the Republic but there were certainly cases heard in the High Court which had their roots in Asia. Both cases which were sparked by events in Asia as well as cases which in fact were related to ongoing or completed legal proceedings in Batavia were heard in the High Court. I argued in Chapter 1 that the States General was crucial in connecting jurisdictions which were otherwise separate. Before the creation of the court in Batavia it is not surprising that cases related to events in Asia were heard in the Republic. This was a period in which the centralisation of the company around Batavia, including the centralisation of the legal system was in progress. But more than that, I argued in Chapter 1 that it was the charter itself that left open a route for high-ranking personnel to air their grievances with the States General. In the case of Goodschalk, the States General then directed the case to the High Court in The Hague. Crucially, this charter provision created a hole through which company disputes leaked into the legal system in the Republic.

Disputes entered the Dutch courts when litigants like Goodschalk and others escaped the jurisdiction of company courts and reappeared in the Republic. In such cases, the VOC argued for extradition. Permission to extradite these men to Batavia, where the

company could judge them, sparked conflicts over jurisdiction and competence in the courts in the Republic. Extradition cases are evidence of the VOC trying to keep disputes in-house, that is, the VOC was trying to assert its 'stateness' in the Republic by claiming jurisdiction over company employees. The courts in the Republic did not necessarily agree on whether or not the VOC should be allowed to extradite company men, leave alone which court was competent to make that decision. The extradition cases are a window into the clash of the two sides of the VOC's corporate identity: while it was ruler and judge in its charter area, in *patria* it was a subject. This duality caused conflicts in the Republic, which took the form of extradition cases, a uniquely VOC problem.

The WIC legal system in the Atlantic did not have the same centralised character as the VOC. This resulted in a different relationship between the company courts among themselves as well as between those courts and the courts in the Republic. By virtue of the delegated sovereignty in the charter, the WIC established courts across the Atlantic. While there were efforts by some governors and company directors to establish localised hierarchies, there was no company headquarters in the Atlantic and no appellate court for all WIC courts. The WIC legal system thus took a different shape from the VOC legal system. The WIC legal system was also different in the way that it intersected with the legal system in the Republic. Cases from the Atlantic courts were appealed in the Republic, in the Court of Appeal for West Indian cases. This court was a function of the States General which played a formal role in sentencing cases. The political body's role was twofold. The States General adjudicated cases in which a company court did not know how to sentence the case; and sentences passed by the company courts could be appealed in the Court of Appeal. The latter cases were then delegated to the High Court. Using the mechanism of delegation, the States General connected the company jurisdictions and the High Court in The Hague.

In addition to connecting jurisdictions via delegation, the States General played an important role in managing company disputes outside of the court system. Petitioning the States General and submitting to its decisions was certainly distinct from formal judicial proceedings but was itself a formal mechanism of dispute management. The decision made by that body did not necessarily resolve the conflict but did implement terms by which interaction – business – could continue. Management of disputes in this way was most clearly seen in the conflicts between the VOC and van Noort, the VOC and Isaac Le Maire, and the VOC and the WIC (Chapter 2). The first two disputes were played out in the political and legal institutions in Holland. The States General managed the conflict between the VOC and van Noort for a number of years, setting the terms of engagement between the companies, but later gave its permission to transfer the dispute to the High Court. Negotiation and mediation via petitioning the States General was part of early modern strategies of company conflict management, which involved simultaneous or subsequent legal proceedings.

Unsurprisingly, the States General concerned itself with diplomatic disputes as well. In practice, this took the form of dealing with disputants who petitioned the political body, and the sovereigns who did so on their behalf. Thus it was the States General that dealt with the letters from James VI of Scotland when Carmichael, who claimed Scottish

subjecthood, tried to claim restitution of goods seized by the VOC in Ambon (Chapter 1). Following the written exchanges, the States General allowed the dispute to be heard in the Court of Holland. However, it is unlikely that proceedings took place there. Later High Court records indicate that the States General delegated the case to a bench of High Court and Court of Holland judges. It was thus by decision of the States General that this dispute entered the High Court. The States General intervened to an even greater extent in one of the many disputes between the WIC and the Courland Company. After one of the Dutch Admiralties had adjudicated the WIC capture of a Courland ship as good prize, the States General overruled the decision, citing reasons of state. The States General explicitly claimed "higher authority" in the dispute (Chapter 2).

This points to an important avenue of future research: the Admiralties and their place in the legal framework of Holland and Zeeland. Admiralty lawsuits were mentioned in High Court cases but always remained somewhat in the background, giving little insight into the relationship between Admiralty jurisdictions, the High Court, and the States General. The States General interfered with Admiralty cases for reasons of state. Diplomacy was a significant issue in Admiralty cases which adjudicated legitimacy of prize, by definition an inter-state matter. As mentioned, the States General overruled the Admiralty decision on prize in a Courland-WIC dispute. In another case, the Admiralty of Amsterdam, Captain Cornelis Schrijver specifically, was involved in negotiating the release of VOC ships which had been captured by Algerian pirates (Chapter 4). Future research on the intersection of prize cases, diplomacy and political authority of the Admiralties will surely provide great insight into conflict management in the Republic and overseas.

Tracing shifts and differences in the kinds of cases that the VOC and the WIC faced in the High Court also required looking beyond the Republic to the charter areas. The companies' organisation of trade within their charter areas was not static. This was significant for conflict management because shifts in company policy affected the kinds of disputes that were heard in the High Court and go some way in explaining differences between VOC and WIC cases. Chapters 2 and 3 in particular highlighted how, over time, company policies on monopolising trade in particular goods changed. For the VOC, the growth of recognition trade in the first decades of the eighteenth century meant a lot more work for the Amsterdam auctioneers. The increased workload reignited the long-running conflict between the auctioneers and the chamber over their remuneration (Chapter 4). As is often repeated, over time the WIC monopolies were whittled away. The effect was that the WIC equipped fewer ships itself; Atlantic trade was conducted by private merchants. This is likely an important factor in explaining the difference in wage cases between the VOC and the WIC. Wage disputes were more likely to include private merchants, shipowners and captains as wage payers, than the WIC chambers.

The different patterns of trade conducted by the companies, from the Republic, is likely also a part of the explanation for why there was such a significant difference in the number of cases which the two companies faced in the High Court. There were fewer wage cases against the WIC, and private trade cases took different forms. While there were cases against employees of both companies who were accused of illegal private trade, the

equipping of vessels for illegal trade in the charter area was a problem only faced by the WIC. The high threshold of entering the Indian Ocean, including the distances and perhaps the greater ease of policing the Cape Route, meant that merchants did not equip individual vessels for illegal trade, but rather took part in companies established in Sweden, Denmark, and Ostend.

Another point of difference between the companies is in share disputes. This was a distinctly VOC problem in the High Court and accounts for some of the difference in the total number of cases against each company. The vibrancy of the secondary market for VOC shares in Amsterdam has been established in scholarship. The High Court cases shed light on share disputes with other chambers too. It is likely that the dynamism of the secondary markets for VOC shares outstripped the markets for WIC shares. Furthermore, it is likely that WIC shareholding attracted a different kind of investor – someone who was interested in Atlantic trade, rather than the VOC investors who had more interest in trading shares than in the company trade which partially underpinned their value.

The VOC and WIC court cases which were adjudicated in the High Court bring new insight into two legal issues, namely inheritance and bankruptcy. The imperial dimensions of company activity precipitated new questions relating to inheritance law. These new questions arose because the courts had to deal with cases in which a will had been drawn up overseas, the heirs were spread over different locations in Europe and in company towns and outposts, and the estate itself consisted of assets in multiple locations and jurisdictions. Inheritance cases cut across the thematic division of the chapters to encompass wage claims, ownership of shares, disputed accounts from recognition trade, and precedence in bankruptcy. A case of foreign heirs who claimed VOC wages as their inheritance reveals the strategy which the VOC developed in the first few decades of company operations. By the 1640s, the VOC had developed a common practice for dealing with foreign claimants on deceased estates. The company explicitly privileged the claims made by inhabitants of the Republic over foreign claimants. This was intended to protect subjects of the States General from the need to pursue claims in foreign courts (Chapter 4). This practice was developed in the context of numerous foreigners who were taken into company employ from the international labour market of the Dutch Republic.

The cases also bring new insight into early modern bankruptcies. While global economic crises have prompted renewed interest in the history of bankruptcy, much of how bankruptcies unfolded in the early modern period remains unclear. The cases involving the companies bring insight into how the courts in the Republic adjudicated business failure – not the bankruptcy cases themselves, but offshoots of those cases. There are three important points. Firstly, as I mentioned earlier, sentences passed by the Insolvency Chamber were appealed in the city courts and from there to the High Court. Secondly, the VOC was not a preferential claimant on insolvent estates of company employees. This was seen in the two cases of the Maertens heirs: the Insolvency Chamber ruled in favour of the heirs, relegating the claim of the VOC to be repaid the debt owed to a chamber for spices purchased. The higher courts upheld the verdict on appeal (Chapter 6). Thirdly, the VOC implemented a policy to shield itself from the costs of merchants' business failure. The VOC sold off the shares of shareholder-debtors. When merchants

who were also shareholders purchased spices and other goods from the company but could not pay, the chamber sold off their shares to partially cover their debt. In this way, the company treated shares as collateral against purchases from the chambers (Chapter 5 and 6).

What then, are the implications of High Court cases against the VOC and WIC? There are at least four areas in which this study contributes. Firstly, the most obvious implication of the existence of cases involving the companies is that the companies were active as litigants. The directors of the companies were named in court sentences, passed by various courts – subsidiary, specialised courts; city courts; the Court of Holland; and the High Court. Both companies employed legal teams to deal with court cases, likely an indication that they expected litigation. This means that in the early modern Dutch Republic, it was possible to sue an institution.

Secondly, the fact that people did sue the companies indicates that they were not considered untouchable. Litigants must have believed in the possibility of winning cases in order to pursue that route, implying that the companies were not protected from law suits, nor from losing lawsuits once they started. While in their charter areas the companies themselves were the highest authority, in the Republic the companies submitted to the workings of the legal system and the decisions of the States General. The role of the States General in conflict management and interfering in legal proceedings cautions us against concluding that the early modern Dutch judiciary was independent. The twinning of company investment and civic office, especially for the VOC, is a further warning against taking the implications too far.

The third point to consider is the implications of the companies in court for Philip Stern's company-state idea. Understanding the VOC's legal system and how the company engaged in the legal system in the Republic are crucial elements for conceiving of company sovereignty and the limits of its jurisdictional reach. The VOC's charter area was a patchwork of political configurations, covering the spectrum from tributary relationships with Asian rulers, to the VOC as sovereign overlord. In parts of the VOC's charter area the VOC was a state, exercising the delegated sovereignty enshrined in its charter. In the Republic, the VOC did not act like a state, but rather submitted itself to the working of the state's political and legal institutions. This was not always quiet acquiescence: extradition cases (Chapter 1 and 3) in particular highlight the company's attempts at asserting its 'stateness' by protecting the jurisdiction of Batavia and the company's prerogative to rule over its employees. Thus the VOC was at the same time, sovereign and judge overseas, and subject in the Republic. This duality caused tensions in the Republic over the limits of the company's reach. In the Republic, the States General kept the state-like tendencies of the company there in check.

The fourth point is on the accessibility of institutions in the early modern Republic. Analysis of the company cases has indicated that the High Court functioned as a more accessible institution than has previously been assumed. This can be concluded from the wide range of litigants who populate the cases, the low financial stakes in some of the cases, and the fact that the court did conduct pro deo cases. Scholars have generally been pessimistic about the broad-based use of legal institutions, based on the prohibitive costs.

Calculating how much legal proceedings cost could address this. In particular, the cost of proceeding in the High Court in The Hague would provide an excellent basis for future research on the accessibility of the institution. Regardless, the accessibility and wide range of litigants of the High Court supports the idea of Jan de Vries and Ad van de Woude that well-functioning institutions were a pillar of the Dutch economy.

The management of company-related conflict in the legal and political institutions of the Republic brings into sharp relief the tensions that arose in the Republic over the creation and management of an empire across the Indian and Atlantic Oceans. The conflicts involved the companies as litigants in cases against their competitors, their own employees and shareholders, and the myriad individuals whose lives were caught up in the building of a Dutch empire.

Appendix

High Court cases involving the VOC and WIC

The following is an exhaustive list of the cases dealt with by the High Court of Holland, Zeeland and West-Friesland which involved the VOC and the WIC. The year(s) denotes when the court passed a sentence in the case. Many cases were multifaceted and all were complex, but to avoid double-counting I have identified one main issue and categorised the cases accordingly.

Monopoly cases

Charters

Year	Company	Litigants	
1619, 1622	VOC	no chamber	Australia Company
1620, 1623, 1633	VOC	Chamber Amsterdam	Magellan Company

Contracts, prize, confiscation, recognition fees

Year	Company	Litigants	
1618	VOC	no chamber	William Carmichael
1621	VOC	no chamber	EIC
1643	WIC	no chamber	Skipper and *reeders Hercules*
1646	WIC	Chamber Rotterdam [Maze]	Dirk Duijst van Voorhout and Adraen Adriansz Drooch, *reeders* of the ship *De Jaeger*
1659	WIC	Chamber Zeeland	Reijnier Jansz
1659	WIC	Chamber Dordrecht, Delft and Rotterdam [Maze]	Pieter Jans Boeije
1660	[WIC]	Dordrecht and Delft [Chamber Maze]	Rotterdam [Chamber Maze]
1662	WIC, Bartels	no chamber	Daniels
1662	WIC	no chamber	*bevrachters* of the ship D*e Liefde*
1662, 1665, 1760, 1671, 1674, 1676	WIC	Chamber Hoorn	Harmon Severijnse, Scheurhoff
1664	WIC	no chamber	*Witte Duijf*

1665, 1686	WIC	Chamber Hoorn	Joseph Alvares
1666, 1669, 1670	WIC	Chamber Amsterdam	Henri Momber
1667	WIC	no chamber	representative of the French West India Company
1673	WIC	Chamber Middelburg [Zeeland]	Verpoorten
1687	WIC	Chamber Zeeland	Pieter Feijssen, *boekhouder De Faem*
1688	WIC	Chamber Middelburg [Zeeland]	Nicolaes van Hoorn
1696	WIC	Chamber Zeeland	Michiel Verpoorten
1705, 1707	WIC	Chamber Maze	Baelde . Involved Beck, van Hoorn, and Wesel and Ostdorp
1709	WIC	Chamber Amsterdam	Barbara Cromhuijsen, Sweerts
1713	WIC	Chamber Amsterdam	Joan Sevenhuijsen
1735/6	WIC	no chamber named	Isaac Minet
1751	WIC, intervened for captain	no chamber	Robert Noree's heirs
1782	WIC	Jacob de Petersen representative of Prince of Orange and other directors	Susanna Catharina la Mont

Private trade

Year	**Company**	**Litigants**	
1680, 1693	VOC	Chamber Amsterdam	Toledo, later Nicolaas Somer for Toledo
1687	VOC	Chamber Amsterdam	Jan Molenaar
1705	VOC	*Heeren XVII*	George Munnick
1706	VOC	no chamber	Laurens Pit, heirs of Johan Pit
1710	VOC	Chamber Hoorn	Heirs of Christiaan Pit
1713, 1714, 1721	VOC	*Heeren XVII*	Ida Hochepied, wed. Wouter Jacobsz. Valkenier
1714	VOC	no chamber	Pieter Goodschalk

1748	VOC	Chamber Amsterdam	Jan Schull
1755	VOC	*Heeren XVII*	George Beems
1778	VOC	no chamber	Johannes Hazelkamp

Wage cases

Year	**Company**	**Litigants**	
1634	WIC	Chamber Zeeland	Jasperssen et al
1645	VOC	Chamber Amsterdam	Hans Boije
1647, 1652	VOC	Chamber Amsterdam	Grietje Jacobs
1668	VOC	Chamber Enkhuizen	Hendrick Fopp van Gent
1674	VOC	Chamber Amsterdam	Maria Thirion
1686, 1688	VOC	Chamber Amsterdam	Salomon (Samuel) and Metgen Elders
1699, 1700	VOC	Chamber Amsterdam	Noeltje Class wed. Boudewijn de Vlamingh
1707, 1708, 1713	VOC	especially Zeeland	Berenberg
1721, 1725	VOC		Mr. Abraham van Kervel
1723	VOC	Chamber Zeeland	C. Bussonius wed. de Bruijn casssier In Zeelant
1741	VOC	Chamber Amsterdam	Reijnier de Wolf en Anthonij Karstens et al
1746	VOC	Amsterdam and other directors	Jacob Kakelaar son of Jan who was in Ambon
1749	VOC	Chamber Amsterdam	vendumeesters Amsterdam
1749	VOC	no chamber	Johan Hendrik van Panhuijs
1750, 1768	VOC	Representative of Prince of Orange, Chamber Amsterdam, and other directors	Margareta Constantia del Borgo wed. J P Schagen
1752, 1753, 1761	VOC	Chamber Amsterdam, plus other directors	Aaltje fransse wed. Canter
1762	VOC		Gualter van der Beets
1771	VOC *hoofdofficierenfonds*		Christina Susana Deldeijn wife of deceased Company employee

Share cases

Year	Company	Litigants	
1621	VOC	Chamber Middelburg (Zeeland)	Thomas L(B)aleij
1625	VOC	Chamber Amsterdam	Abraham de Ligue
1655	VOC	Chamber Hoorn	Bartholotti
1706	VOC	Chamber Zeeland	Franc Ximenes Belmonte
1709, 1713	VOC		*Raden en meesters* of Great Britain
1714, 1715	VOC	Chamber Amsterdam	Aaron en Joseph de Pinto
1715, 1717	VOC	Chamber Zeeland	Coning and/or Hatting
1746	VOC	Chamber Zeeland	Moses van Salomon Curiel and Violante Abendana Osorio
1752	VOC	Chamber Amsterdam	Mr. Gerard Bikker

Financial instruments

Year	Company	Litigants	
1655, 1657	VOC	Chamber Amsterdam	Sara van Heijnsbergen/Dirck de Goijer
1661, 1662	VOC	Chamber Amsterdam	Junius for Maria
1662	VOC	Chamber Amsterdam	Johan Maes
1680	WIC	Chamber Middelburg [Zeeland]	Jacob van Hoorn/Harm/Hoon
1682	VOC	Chamber Zeeland	Mr. Johannes de Braij
1690, 1692	VOC	Chamber Middelburg [Zeeland]	Adriana van Blijenburgh
1690	WIC	Chamber Zeeland	Johan Godijn cs
1704	VOC	Chamber Enkhuizen	Mr. Joan Haga cs
1743, 1744, 1745, 1746	VOC	*Heeren XVII*	Philip van der Giesen
1770	VOC	Chamber Zeeland	Daniel Barbé

Compensation claims

Year	Company	Litigants	
1705, 1706	VOC	Chamber Zeeland	Sautijn
1708, 1717, 1719	VOC	especially Chamber Amsterdam	Pieter de la Rue
1717	VOC	Chamber Amsterdam	Anna Montenacq
1726	VOC	Chamber Amsterdam	Mr. Andries Kluppel and Andries Schaak

Inheritance

Year	Company	Litigants	
1674, 1675, 1683, 1690	VOC	Chamber Amsterdam	Lucas Milliart, Jan van Emmrick, Severijn Beek
1680, 1688, 1689, 1690, 1692, 1695	WIC	Chamber Amsterdam, of 'old, dissolved company', later 'New Chamber Amsterdam'	Maria Halewijn
1713	VOC	Chamber Amsterdam	Colerus
1753	VOC	[Chamber Amsterdam]	*Procureur Generaal*
1762	VOC	no chamber	Hendrik Boom representing Phoonsen
1784	VOC	Chamber Amsterdam	Moores, advocate, and creditors
1784	VOC	Chamber Amsterdam	Jolle Jolles and Johannes Rietveld, curators

Property rights related to colonial goods

Year	Company	Litigants	
1607, 1614	VOC	Chamber Enkhuizen	Egbert Willemsen
1609, 1618	VOC in Zeeland	Chamber Amsterdam	Lievens for Lennart/Leenderts
1634	VOC	Chamber Delft	*Regenten van huijsarmen en almoeseniershuis tot Amsterdam*
1637	WIC	Chamber Middelburg [Zeeland]	Charles de Conuck

1665	VOC	Chamber Middelburg [Zeeland]	Groterus and Le Seultre
1667	WIC	Laurens Verpoorten, WIC Chamber Zeeland	Weths/Wesels
1688	VOC	Chamber Enkhuizen	Isaac Wardingh?
1702	VOC	Chamber Zeeland	Hogendorp, regarding Jan Maertens
1703	VOC	Chamber Zeeland	Van der Beecke and Securius, regarding Jan Maertens
1788	VOC	Chamber Amsterdam	Jan Gildemeester and son
1788	VOC	Chamber Amsterdam	Velkens and Schouten De Waal, merchants
1788	VOC	Chamber Amsterdam	Fredrik Rohne

Uncategorised

Year	**Company**	**Litigants**	
1614	VOC	Chamber Middelburg [Zeeland]	Willem Usselincx
1626	VOC	Chamber Amsterdam	Aelbert Gerrits
1653	WIC	Chamber Hoorn	Jacob Janspoten
1654	VOC	Chamber Amsterdam	Hendrik van den H?
1660	WIC	Chamber Amsterdam	Martin Barts from Gluckstad
1679	VOC	no chamber	Adriaan van Borselen
1700, 1701	WIC	Noorder Quartier	Hillebrant van der Sluijs
1747	VOC	no chamber	Magtilda Vergeel
1778	VOC	Chamber Zeeland	Schip Gilde Middelburg
1782	WIC	Chamber Zeeland	De Bruyn en Smit

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Samenvatting

Courting Conflict is een studie naar conflictbeheersing in de vroegmoderne Nederlandse Republiek. Het richt zich op geschillen die betrekking hadden op de Oost- en West-Indische Compagnieën en die behandeld werden door de Hoge Raad van Holland, Zeeland en West-Friesland, gevestigd in Den Haag. Tot op heden is de betrokkenheid van compagnieën in rechtszaken in de Republiek genegeerd door historici. Dit onderzoek vult daarmee een gat in de historiografie over de Oost- en West-Indische Compagnieën.

Aansluitend bij recente ontwikkelingen in de literatuur benadert dit onderzoek de zaken vanuit het oogpunt van conflictbeheersing en niet uitsluitend door de lens van conflictbeslechting. Dit bredere perspectief betrekt andere instituties in het verhaal, namelijk de Staten-Generaal, die een belangrijke rol speelden in het managen van conflicten voortkomend uit de overzeese expansie van de Republiek.

Het feit dat zowel de VOC als de WIC betrokken waren in de procesvoering toont aan dat geen van beide compagnieën verheven was boven de wet. Beiden ontvingen een octrooi van de Staten-Generaal, waarin een deel van de soevereiniteit overgedragen werd en waarmee, in de ogen van de Republiek, de compagnieën bestuurlijk en juridisch soeverein waren in hun eigen octrooigebied. In de Republiek zelf waren de zowel de VOC als WIC echter ondergeschikt aan de Staten-Generaal en beslissingen van de gerechtelijke hoven. Binnen het octrooigebied was de VOC rechter in haar eigen hoven, met het hoogste hof gevestigd in het VOC-hoofdkwartier, Batavia. Ondanks pogingen van individuen om een dergelijk machtscentrum van de WIC in het Atlantisch gebied te bewerkstelligen, bleef een 'Atlantisch Batavia' uit.

De relatie tussen de Hoge Raad en de VOC-hoven was anders dan die met de WIC-hoven. Het gerechtelijk systeem van de VOC was bedacht als een losstaand stelsel, van waaruit men niet in hoger beroep zou kunnen gaan in de Republiek. Vonnissen van de Raad van Justitie in Batavia waren bindend. Echter, zaken rondom het octrooi vonden wel hun weg naar de Republiek, net als wanneer werknemers aan de jurisdictie van Batavia ontsnapten en naar de Republiek gingen, en wanneer werknemers gebruik maakten van een artikel in het octrooi om hun beklag te doen bij de Staten-Generaal. De Staten-Generaal konden vervolgens zaken doorverwijzen naar de Hoge Raad en verbond zou de losstaande jurisdicties. Dit gold ook voor de WIC, maar in een meer directe manier. Vonnissen uitgesproken in WIC-hoven konden wel direct worden aangevochten in de Republiek, namelijk in het Hof van Appèl, wat feitelijk meer een andere functie van de Staten-Generaal was dan een apart hof. De Staten-Generaal delegeerden het schrijven van een vonnis aan de Hoge Raad, maar bevestigden zelf het vonnis nadat het was uitgesproken door de rechters.

De bewindhebbers van kamers van de VOC en WIC traden beiden als procederende partij op, zowel in zaken die voortkwamen uit de octrooigebieden als die ontsprongen in de Republiek. In totaal waren de compagnieën betrokken bij 106 aparte rechtszaken. VOC-bewindhebbers waren rechtszoekende in 74 zaken en WIC-bewindhebbers in 32 zaken. De zaken hadden betrekking op een wijd scala aan onderwerpen en procederende partijen. De compagnieën werden voor het hof gedaagd vanwege zowel bedrijfsmatige als

persoonlijke redenen en individuen procedeerden zowel alleen als in groepen. De aanklagers waren zowel onderdanen van de Staten-Generaal als vreemdelingen, zowel mannen als vrouwen, en zowel insiders (compagniewerknemers en aandeelhouders) als buitenstaanders en rivalen.

Conflicten met concurrenten ontstonden over de toegang tot het octrooigebied van een compagnie. De VOC was betrokken in conflicten met rivalen die monopolies voor zichzelf claimden en zo het octrooi van de VOC zouden beperken. Deze conflicten werden behandeld door de Staten-Generaal en gehoord in de rechtszaal naarmate de zaken zich voltrokken. Olivier van Noort en Isaac Le Maire komen naar voren als vooraanstaande VOC-rivalen: beiden waren centrale figuren in een compagnie, respectievelijk de Magelhaensche Compagnie en de Australische Compagnie, die het monopolie van de VOC aanvochten, hoewel ze niet gekant waren tegen monopolies als principe. De VOC en WIC streden ook over de reikwijdte van hun monopolies, wat de WIC de mogelijkheid bood om een vergoeding van de VOC te vragen voor toegang tot het WIC-octrooi. De WIC paste dezelfde strategie toe jegens buitenlandse concurrenten en Nederlandse kooplieden. De kamers gaven namelijk toegang om in het WIC-octrooigebied te mogen handelen tegen betaling van recognitiegeld, wat tot conflicten leidde in de Hoge Raad. Beide compagnieën waren dus betrokken in zaken rondom monopolies, maar deze namen verschillende vormen aan.

De VOC en WIC waren ook allebei betrokken in zaken rondom privéhandel. De compagnieën stelden beperkingen aan de privéhandel van hun werknemers en afwijken van de aard of het aantal van toegestane goederen was een misdrijf. De VOC- en WIC-zaken belichten het belang van samenwerking in illegale privéhandel. VOC-medewerkers namen goederen mee op de uitreis om die later met winst te verkopen, of zorgden dat verboden goederen van boord geladen werden vóór de terugkeer in de Republiek of zelfs pas vlak voor de laatste inspectie. Sommige VOC-werknemers die beschuldigd werden van privéhandel probeerden de rechtsgang in Batavia te ontlopen door naar de Republiek te vluchten. De strategie van de VOC was om hen uitgeleverd te krijgen naar Batavia om daar onder VOC-jurisdictie berecht te worden. Uitleveringszaken leidden tot conflicten tussen gerechtshoven in de Republiek: de hoven waren het niet noodzakelijkerwijs eens over of de VOC het recht had om mensen gedwongen te transporteren; daarnaast was er debat welk hof gemachtigd was om die beslissing te maken. De uitleveringszaken brengen de dualiteit van de VOC aan het licht. Enerzijds handelde de VOC als een eigen staat in haar octrooigebied, anderzijds werd de "statelijkheid" aan banden gelegd in de Republiek. In het Atlantisch gebied was illegale privéhandel van minstens even grote omvang. De WIC kon geen grip krijgen op de "lorrendraaiers", de smokkelaars die actief waren in het Atlantisch gebied in strijd met het WIC-monopolie. De zaken die tot de Hoge Raad kwamen betroffen de handel in goud en in slaafgemaakte Afrikanen. Tezamen schijnen de rechtszaken licht op de mechanismen achter de smokkel van werknemers van de compagnieën en leveren daarmee een belangrijke bijdrage aan de literatuur over illegale privéhandel.

Werken voor de compagnie, en het bijbehorende salaris, raakte meer mensen dan enkel de mannen in dienst van de compagnieën. Toekomstig loon was overdraagbaar. De

VOC behandelde dergelijke transporten binnenshuis, in de salariskantoren; WIC-werknemers droegen hun salaris over aan anderen via notarissen. Nog te innen salaris kon worden overdragen aan erfgenamen en zelfs verkocht. Deze overdraagbaarheid van lonen verbreedde de groep van rechtszoekenden naar crediteuren en familieleden van de werknemers. Een loonclaim begon in de kamer van de Compagnie en, indien afgewezen, kon worden vervolgd in de rechtszaal, waarbij de bewindhebbers van de desbetreffende kamers, als directe werkgevers, als tegenpartij optraden. Collectieve claims konden de vorm aannemen van erfgenamen die gezamenlijk hun erfenis opeisten en, als voorbeeld van collectieve actie, van bemanningsleden die samen met hun officieren de compagnie aanklaagden om hun salaris uitbetaald te krijgen. Loonzaken laten hiermee zien dat rechtszaken voor de Hoge Raad niet alleen grote zaken behelsden; loonzaken gingen juist vaak om relatief kleine bedragen.

Een typisch VOC-probleem waren zaken voor de Hoge Raad tussen bewindhebbers van specifieke kamers en aandeelhouders. Wat betreft de WIC kwamen er geen dergelijke zaken voor de Hoge Raad. Dit verschil komt waarschijnlijk door twee factoren. Ten eerste was de markt voor VOC-aandelen levendiger dan die voor WIC-stukken. Ten tweede waren veel VOC-aandeelhouders geïnteresseerd in aandelen als financieel instrument in plaats van als ondersteuning van handel in de Indische Oceaan; een dergelijke transitie heeft bij WIC-aandeelhouders wellicht niet plaatsgevonden. Verschillende generaties van de familie Bartolotti waren betrokken in procedures tegen de VOC over aandelen in de kamer Hoorn. Wanneer het geld gevolgd wordt langs een spoor van faillissement en schuld wordt duidelijk dat de aanvankelijke investering gedaan werd door iemand buiten de Republiek. De analyse van dergelijke rechtszaken met bewindhebbers van de kamers als procederende partij verbetert ons begrip van aandelenmarkten in de Republiek. Daarnaast geeft het inzicht in conflicten omtrent aandeelhouderschap, die tot nu toe altijd onderzocht werden in rechtszaken tussen aandeelhouders onderling.

Zowel VOC- als WIC-bewindhebbers van de kamers waren betrokken in zaken rondom eigendomsrechten, die voortvloeiden uit de aankoop en verkoop van koloniale goederen. De WIC had hierbij soms ook te maken met prijsgemaakte goederen, waarbij vastgesteld moest worden of de compagnie wel het recht had deze goederen wel te verkopen als ze buit waren gemaakt door een kaper in het WIC-octrooigebied. De analyse van deze zaken werpt daarnaast nieuw licht op faillissements- en erfpraktijken. De zaken voor de Hoge Raad tonen aan dat de VOC geen preferente crediteur was bij erfenissen betreffende failliete boedels, en dat de VOC-kamers aandelen als onderpand beschouwde wanneer aandeelhouders goederen wilde kopen op krediet. Een belangrijke conclusie is dat de Hoge Raad eigendomsrechten van individuen beschermde tegen de VOC en WIC.

De bewindhebbers van de VOC en de WIC waren dus betrokken in rechtszaken in de Hoge Raad omtrent monopolies, privéhandel, loon en eigendomsrechten. De VOC-bewindhebbers werden daarnaast nog geconfronteerd met zaken over aandelen. Hoewel er overeenkomsten zijn in de aard van de zaken tegen beide compagnieën, is er een belangrijk verschil in het aantal vonnissen in de Hoge Raad. De VOC was bij een veel groter aantal zaken betrokken dan de WIC (74 tegen 32). Het verklaren van dit verschil in aantallen zaken kan niet los gezien worden van de inhoud ervan. Ik stel dat het aantal

loonzaken beïnvloed werd door verschillen in de organisatie van de handel en uithollen van het WIC-monopolie. Na verloop van tijd werd de WIC steeds minder een directe werkgever en dus zullen loonzaken meer de vorm hebben aangenomen van een kapitein of koopman tegen een bemanning, zonder betrokkenheid van de WIC. Het verschil in aandelenmarkten en mogelijk een verschil in voorkeur, zoals boven aangegeven, verklaren in ieder geval deels waarom aandelenzaken een uitsluitend een VOC-probleem waren. Om het verschil in rechtszaken voor de Hoge Raad verder te verklaren is meer onderzoek nodig naar zaken betreffende de compagnieën in andere hoven en naar conflictbeheersing van beide compagnieën in andersoortige commerciële conflicten.

In lijn met recente ontwikkelingen in onderzoek naar het vroegmoderne Nederlandse koloniale rijk, behandelt dit onderzoek over conflictbeheersing zowel de VOC als de WIC. Beide compagnieën worden binnen hetzelfde kader geanalyseerd, wat het mogelijk maakt om te zien waar de overeenkomsten en verschillen zitten tussen de aard van de zaken en rechtszoekenden waarmee de VOC en WIC geconfronteerd werden voor de Hoge Raad.

Dit onderzoek is meer dan een geschiedenis van de compagnieën in de rechtszaal. Het is een studie naar de interactie tussen de compagnieën, de Staten-Generaal en de Hoge Raad. De rol van de Staten-Generaal komt naar voren zowel voor, tijdens, als na de rechtszaken. Bovendien onderstreept dit onderzoek dat juridische bronnen niet gegenereerd hoeven te worden door de compagnieën om toch een bijdrage te kunnen leveren aan de juridische, sociale en economische geschiedenis van het Nederlandse koloniale rijk.

Curriculum Vitae

Kate Jean Ekama was born in Cape Town on 24 October 1986. She completed her BA (Honours) in History at the University of Cape Town in 2010. That same year, she was awarded an Encompass scholarship to begin a Research Masters degree at Leiden University in the Netherlands. She graduated from the programme with a Research MA (cum laude) in 2012. She then began working on her PhD dissertation at the same university. Her research was part of the NWO-funded VIDI project *Challenging monopolies, building global empires in the early modern period* and was conducted under the supervision of Prof Dr. Catiá Antunes and Dr. Karwan Fatah-Black.