

1

Commercial and Legal Contexts

1.1 Introduction

Those seeking to understand the role of commercial law in a society will not get far without an appreciation (at least in broad outline) of the relevant legal doctrines. These contain the categories which the law has invented, and which provide the framework in which commercial practices and institutions can operate. Law in context must begin with the law and a knowledge of doctrine. Focusing on the doctrine alone, however, tells only part of the story of how commercial law has worked in practice and the ends pursued within its remit. A case-centred approach neglects, for instance, the types of commercial transaction which have been rarely litigated. The common-law system depends on parties bringing cases to court. Commercial parties characteristically seek to avoid entanglement in the law, decidedly so among some well-organised commercial groups able to sustain their own dispute resolution mechanisms.

Even if matters have arisen in legal proceedings, a focus on doctrine misses out on the impact of legal decisions (and legislation), which has often been mitigated by commercial parties redrafting contracts and market rules, by deals being restructured and by the modification of existing institutions or the creation of new ones. An overabundant concern with doctrine also neglects the reality that commercial parties have never been devoted to its purity or rational development when pursuing profit. Nor have their lawyers at the expense of winning a case. For both commercial parties and their lawyers, law has generally been a framework and malleable resource to be used instrumentally to achieve commercial ends.

This book is about English commercial law over the period of about 140 years, from about 1830 to 1970, with an emphasis on its international reach. As a study of commercial law the focus, in the main, is on commercial transactions, in particular those involving the sale and supply of goods and related financial services.¹ So it is not primarily concerned with business organisations

¹ C. Twigg-Flesner & G. Villalta Puig, 'Introduction: Boundaries of Commercial Law', in C. Twigg-Flesner & G. Villalta Puig (eds.), *Boundaries of Commercial and Trade Law*, Munich, Sellier European Law Publishers, 2011, 1. cf. the wider approach in R. Goode, *Commercial Law in the Next Millennium*, London, Sweet & Maxwell, 1998, 8–9, and Lord Wright's institutional

such as companies; utilities such as the railways; or the constitution, operation and insolvency of either.² Nor is it about transport (the carriage of goods) or insurance. Further, as a study of commercial law, it is primarily about transactions between commercial parties, not those between commercial parties and consumers.³ Consequently, the emphasis is on raw materials and commercial not consumer goods, and attention in the distribution of goods is given to the channels between producers and retailers, not between retailers and consumers.

With the focus on commercial transactions, the chapters deal with where and how they occurred during our period – the commodities markets, where parties entered spot, forward and futures transactions for sale, purchase and speculation (Chapter 2); intermediaries, such as agents, brokers, distributors and financial institutions, whose prime function was to facilitate the transactions of others – to market their products and services or, in the case of banks, to marshal finance for this (Chapters 3 and 6); sale and related techniques such as hire and hire purchase, employed for the marketing and distribution of manufactured goods (Chapter 4); the international trade in products and commodities (Chapters 4 and 5); and the backing of banks through trade finance and advances to manufacturers for products to be supplied both at home and abroad (Chapter 6).

As an account of commercial law in context, the book cannot be a full legal history.⁴ As indicated, however, the substantive law is often a key, since understanding how particular aspects of trade and commerce worked demands a knowledge of the legal framework within which they were conducted. So there are accounts of doctrine in the following chapters. However, the legal parts of the book are far from comprehensive and in the main cover only the bare bones necessary to understand law's relationship with commercial practice. There are other reasons for referring to legal decisions. One is to determine the extent to which the courts moulded legal doctrine, if at all, to accommodate commercial need. Another is to mine from the case reports the factual findings about how commercial transactions during our period were conducted. As well as the case law, reference is made to the work of economic and business historians, which is essential to understanding the broader context in which commercial law operated.

approach, 'Some Developments of Commercial Law in the Present Century', Presidential Address, Holdsworth Club, Faculty of Law, University of Birmingham, 17 May 1935, 1 (the law dealt with in the Commercial Court).

² e.g., R. Kostal, *Law and English Railway Capitalism 1825–1875*, Oxford, Clarendon, 1994; R. Harris, *Industrializing English Law: Entrepreneurship and Business Organization 1720–1844*, Cambridge, Cambridge University Press, 2000.

³ cf. C. Scott & J. Black (eds.), *Cranston's Consumers and the Law*, Law in Context series, Cambridge, Cambridge University Press, 2000.

⁴ cf. W. Cornish, J. Anderson, R. Cocks, M. Lobban, P. Polden & K. Smith, *Oxford History of the Laws of England*, Oxford, Oxford University Press, 2010, vol. XI–XIII (hereafter, *Oxford History of the Laws of England*).

The book also draws on business and bank archives to understand, in a more complete way than can be derived from these other sources, how commercial parties perceived and used the law during our period. This is the counterpart to modern-day empirical studies of the law in action. Despite the ravages of time, there is a plethora of business and bank archives relevant to the topic. Those referred to are roughly representative of the different aspects of commercial law covered (trade associations/markets, agents, merchants, manufacturers, financiers and banks), although I have only scratched the surface of what is available. The petering out of these archives by the 1960s is one reason that the story is drawn to a close in 1970. Another is that by 1970 London and Liverpool as world centres for trade had faded, as had Britain's role as a leader in manufacturing – activities which, during our period, were central to the story of commercial law as the law of transactions.

This introductory chapter provides an overview of both the commercial and legal context of the book. Part 1.2 paints a picture in outline of the markets, techniques and institutions of the industrial age associated with trading commodities, distributing manufacturing products and financing both. This context is revisited in different ways in the course of the book. Then in part 1.3, the chapter turns to the legal context. Relevant bodies of commercial law appear in later chapters. At this point the aim is to explore the general principles which framed the body of transactional law later examined. It was within this framework that commercial parties constructed through private law-making the markets, techniques and institutions which appear in the narrative.

1.2 Commercial Context: Markets, Organisations and Players

There were only a dozen passengers all told, for this was primarily a cargo boat. One of these fellow travellers caught Mr Golspie's eye, nodded, and then came nearer . . . 'This port of London's a bit of an eye-opener to me,' Mr Golspie remarked.

[Mr Sugden] Ever been all round it? Tremendous – oh tremendous! There's the West India Docks further up here, and then Surrey Commercial on the other side. You never saw such a place. It's a hard day's work looking round the Surrey Commercial. . . .

And where do you live when you're at home?

St. Helens. That's where my firm is, and that's where I live. (J. B. Priestley, *Angel Pavement*, 1930)⁵

The setting for Priestley's 1930 novel is the City of London and its commercial dealings, but in the closing pages, as the fraudulent timber agent, Golspie, leaves by ship for South America, the author draws on other aspects of Britain's

⁵ London, William Heinemann, 1930.

commercial life at the time – the port of London through which the vessel initially passes, and the industrial Midlands and north of England, represented by Mr Sugden, whose firm is based in St Helens, Lancashire. This was part of the context in which commercial law worked and developed during our period. As the first industrial nation, Britain's dominance in manufacturing was gradually forfeited in the years prior to the First World War with the growth of Germany and the United States, and in relative decline after that.⁶

The other side of the coin was Britain as a great trading nation, and the size of its ports like London, as Golspie and Sugden observed. These handled the manufactured goods for export, but also the huge imports – raw materials for manufacturing, food for the new middle classes and workers in the factories and service industries, and timber for building. Domestic production of grain, wool and timber was inadequate, and these needed to be obtained from abroad. Raw materials like cotton, jute and rubber were only available from more conducive climes. Rising prosperity and changing tastes meant a greater demand for commodities such as tea, coffee, sugar, rice and spices.⁷

Against this backdrop of imports, it should not be surprising that commodity markets emerged. Nor should it be surprising that these markets should occasion trade associations with a mission of bringing order – through establishing standards for goods, laying down rules and regulations for dealings, and drafting standard form contracts to govern individual transactions. Associated with Britain as the leading trading nation, and these markets, were London's banks and sterling as the world's reserve currency, the advanced state for the time of its communications network with the rest of the world, and the country's shipping and marine and general insurance business. By the end of the nineteenth century Britain was the world leader in all these, with the added advantage that clustered in the City of London they were greater as a whole than as individual institutions.⁸ Not to be forgotten in all this was British

⁶ K. Harley, 'The Legacy of the Early Start'; M. Kitson & J. Michie, 'The De-Industrial Revolution: The Rise and Fall of UK Manufacturing, 1870–2010', in R. Floud, J. Humphries & P. Johnson (eds.), *The Cambridge History of Modern Britain Growth and Decline 1870 to the Present*, vol. II, 2nd ed., Cambridge, Cambridge University Press, 2014; J. Tomlinson, 'De-industrialization Not Decline: A New Meta-narrative for Post-war British History' (2016) 27 *Twentieth Century British Hist* 76; N. Broadberry, *The Productivity Race: British Manufacturing in International Perspective, 1850–1990*, Cambridge, Cambridge University Press, 1997; B. Elbaum & W. Lazonick (eds.), *The Decline of the British Economy*, Oxford, Oxford University Press, 1986 (chapters by Lazonick, Lewchuk); P. Mathias, *The First Industrial Nation*, London, Methuen, 1969, 340–341, 380.

⁷ M. Turner, 'Agriculture, 1860–1914', in R. Floud & P. Johnson (eds.), *The Cambridge Economic History of Modern Britain, Economic Maturity 1860–1939*, Cambridge, Cambridge University Press, 2004, vol. II, 150–151; C. Harley, 'Trading 1870–1914', in *ibid.*, 166–167.

⁸ S. Mollan & R. Michie, 'The City of London as an International Commercial and Financial Centre since 1900' (2012) 13 *Enterprise & Society*, 538, 543–544, 576. Among contemporary accounts, see F. Jackson, *Lectures on British Commerce Including Finance, Insurance, Business and Industry*, London, Pitman, 1912 (chapters by Owen and Bisgood).

military, especially naval, power, its large merchant marine fleet and its Empire, with the economic resources which that afforded.⁹

Although by the First World War Britain had been overtaken by the United States in industrial production, it remained the largest trading nation. Trade was still a matter of exporting manufactured goods and importing food and raw materials. Britain had been an important entrepôt, but as that declined it had become a centre for organising trade elsewhere.¹⁰ Until the middle of the nineteenth century textiles had been the dominant export, but after that machinery and other capital goods became a significant component of total exports.¹¹ Trade demanded a network of agency and other arrangements both in Britain and abroad to facilitate transactions, as well as sound financial backing. This was furnished by a sophisticated system of trade finance arranged by the merchant (and later the joint stock) banks in the City of London. There has been a long debate whether this was matched by an equally effective system for financing British industry.¹²

1 Markets, Trade Associations and Standard Form Contracts

Organised markets in commodities like grain, cotton, sugar, tea and rubber were established in London and Liverpool in the nineteenth and early part of the twentieth centuries. They were a product of the rising volume of international trade as Britain became the first industrial nation, a major importer of these commodities for the needs of its factories and population, and a centre for arranging their distribution elsewhere. Added stimulus to trade was provided in the second half of the nineteenth century with the improvements in communications and infrastructure. The telegraph meant parties could more easily garner information about, and order, commodities, and the railways, the steamship lines, and the ports and docks meant improved productivity, more efficient flows and cheaper prices.¹³ World prices were struck as a result of the numerous transactions by brokers on the London and Liverpool commodities markets.¹⁴

⁹ K. O'Rourke, 'From Empire to Europe: Britain in the World Economy', in R. Floud, J. Humphries & P. Johnson (eds.), *The Cambridge History of Modern Britain Growth and Decline 1870 to the Present*, 2nd ed., Cambridge, Cambridge University Press, 2014, 70–72.

¹⁰ R. Michie, 'The City and International Trade', in D. Platt, A. Latham & R. Michie (eds.), *Decline and Recovery in Britain's Overseas Trade 1873–1914*, London, Macmillan, 1993.

¹¹ S. Chapman, *Merchant Enterprise in Britain: From the Industrial Revolution to World War I*, Cambridge, Cambridge University Press, 1992, 3–4, 7.

¹² 376–377 below.

¹³ E. Williams, 'Thirty Years in the Grain Trade' (July 1895) 161 *North American Review* 25.

¹⁴ e.g., S. Topic & A. Wells, *Global Markets Transformed 1870–1945*, Cambridge, MA, Harvard University Press, 2012, 48–50, 62–64, 84–92; K. O'Rourke, 'The European Grain Invasion, 1870–1913' (1997) 57 *J Econ Hist* 775; S. Mercier, 'The Evolution of World Grain Trade' (1999) 21 *Review Agricultural Econ* 225; C. Harley, 'Transportation, the World Wheat Trade, and the Kuznets Cycle 1850–1913' (1980) 17 *Explorations Econ Hist* 218; W. Malenbaum, *The World Wheat Economy 1885–1939*, Cambridge, MA, Harvard University Press, 1953.

Chapters 2 and 5 pursue in greater detail these international commodity markets, the brokers dealing on them, the trade associations and their work in formulating standards, rules and standard form contracts – and the role of law as the framework for all three activities. What follows is a background sketch. The key commodity markets are outlined, along with the brokers who worked there and the role of auctions in the process of commodity dealings (although that role was limited in time and scope). There is then an account of the trade associations, which played a pivotal role in designing the standards, rules and standard form contracts for commodity trading and of the institutional underpinning.

(i) Commodity Markets, Brokers and Auctions

The London and Liverpool commodities markets started life as informal meetings of merchants interested in foreign commodities trading based at the London coffee houses, the Royal Exchange and the docks.¹⁵ The Baltic Exchange traces its origins to 1744, when the Virginia and Maryland coffee house changed its name to the Virginia and Baltick, to reflect the fact that the merchants and shipowners who gathered there had business in both North America and the Baltic Sea region. The formalisation of the Baltic Exchange in 1823, by the adoption of rules for membership, was a reaction against the extreme speculation in tallow on the Baltic Walk of the Royal Exchange.¹⁶ Initially, commodity dealings on the Baltic Exchange took place in tallow, linseed, flax and hemp.¹⁷

The sharp increase in grain imports in Britain after the repeal of the Corn Laws established a world market.¹⁸ Wheat came initially from the Black Sea region of Russia and from the Continent, then from the 1860s from the United States and India. In the 1890s there were new entrants such as Canada, Argentina and Australia.¹⁹ From the middle of the nineteenth century large-scale transactions in grain cargoes from abroad took place between brokers on the Baltic Exchange, which continued to be a major venue for grain trading into the twentieth century.²⁰ In the late 1920s the Baltic was said to be the most

¹⁵ B. Lillywhite, *London Coffee Houses*, London, Allen & Unwin, 1963. See also B. Cowan, *The Social Life of Coffee: The Emergence of the British Coffeehouse*, New Haven, Yale University Press, 2005, 134, 165.

¹⁶ H. Barty-King, *The Baltic Exchange*, London, Hutchinson Benham, 1977, 58–60, 70.

¹⁷ Tallow was an important lubricant in the early nineteenth century and a source of light in the form of candles until the arrival of the kerosene oil lamp and gas. Linseed oil was used for finishing surfaces (varnish; paint). Hemp was used for making rope, bags and cloth.

¹⁸ Note that corn was the English expression for grain; it was not confined to maize or American corn.

¹⁹ M. Ejrnæs, K. Gunnar Persson & S. Rich, 'Feeding the British: Convergence and Market Efficiency in the Nineteenth-Century Grain Trade' (2008) 61 *Econ Hist Rev* 140, 146; M. Atkin, *International Grain Trade*, Cambridge, Woodhead Publishing, 1992, 18; P. Herlihy, *Odessa: A History 1794–1914*, Cambridge, MA, Harvard Ukrainian Research Institute, 1986, 105, 204–206.

²⁰ D. Kynaston, *The City of London. The Golden Years 1890–1914*, London, Pimlico, 1995, 19, 23, 258–263; *The City of London. Illusions of Gold 1914–1945*, London, Pimlico, 1999, 252–255; R.

important European market for grain, with transactions in a single day sometimes amounting to over £2,500,000.²¹

Brokers in the grain trade in the 1930s did a considerable business for customers in continental Europe. Customary brokerage in that trade was 1½ pence per quarter,²² but more was charged when cable and telephone expenses were high, or as a premium to cover del credere risk.²³ Over time, the concentration of millers and their vertical integration with the large bakers, coupled with government encouragement of home cereal production, led to changes in the structure of the grain trade and the role of intermediaries.²⁴ There was not the same level of activity for them after the Second World War, although grain was still being traded on the Baltic in the 1960s. At the end of our period the transnational grain traders like Cargill, Bunge, Garnac, Continental and Louis Dreyfus – names known though important cases in the law reports – were acting as principals.²⁵ The Baltic continued as a leading shipping market, where shipowners and charterers could charter and buy and sell vessels.

The Baltic Exchange was for grain; the venue for trading other commodities was elsewhere. Early on there were printed conditions for the sale of commodities by public auction at places like Garraway's Coffee House and, after their opening in Mincing Lane in 1811, the London Commercial Sale Rooms.²⁶ By the middle of the nineteenth century brokers were buying and selling sugar, coffee, tea, spices and other 'foreign and colonial' produce in Mincing Lane.²⁷ Mincing Lane continued to provide the venue for the markets for these and other commodities like rubber, which arrived later in the century. By the early twentieth century there could be sixty commodity auctions a day at the Commercial Sale Rooms – tea, sugar, coffee, cocoa and spices, as well as other produce such as jute, shellac, tortoiseshell and mother-of-pearl.²⁸ No samples of the commodities being sold were permitted at the Commercial Sale Rooms, and they had to be inspected at the warehouses, wharfs and docks where they were stored, at brokers' offices or, after trade associations were

Michie, *The City of London: Continuity and Change 1850–1990*, Basingstoke, Macmillan, 1992, Ch. 2.

²¹ S. Dowling, *The Exchanges of London*, London, Butterworth & Co, 1929, 180–181, 155.

²² A quarter in imperial measurement is 28 lbs.

²³ A. Hooker, *The International Grain Trade*, 2nd ed., London, Pitman, 1939, 38. On del credere commission, 157–161 below.

²⁴ *Report on the Marketing of Wheat, Barley and Oats in England and Wales*, London, Ministry of Agriculture and Fisheries Economic Series, No. 18, 1928, 130; G. Rees, R. Craig & D. Jones, *Britain's Commodity Markets*, London, Paul Elek Books, 1972, 161, 168.

²⁵ D. Morgan, *Merchants of Grain*, London, Weidenfeld and Nicolson, 1979; W. Broehl, *Cargill Trading the World's Grain*, Hanover, NH, University Press of New England, 1992.

²⁶ Garraway's closed in the middle of the nineteenth century.

²⁷ Anon, *The City; or, the Physiology of London Business*, London, Groombridge, 1852, 157.

²⁸ G. Rees, *The History of the London Commodity Market*, London, Commodity Analysis Ltd, 1978, 15.

formed, where they kept them.²⁹ Plantation House in Mincing Lane became the location of rubber and tea auctions.

Ubiquitous in the commodity markets until the First World War were the brokers, acting as agents for others or in some cases as principals for themselves. Brokers from the beginning of our period traded with each other and issued bought and sold notes containing the basic terms of a sale.³⁰ They also conducted auctions, and over time the management of these became a sophisticated business.³¹ Brokers organising and participating in commodity dealings formed themselves into associations. The terms established by the London General Produce Brokers' Association, which dated from 1878, covered trading in a number of commodities.³²

As well as the London General Produce Brokers' Association, there were associations of brokers for specific commodities, such as the Tea Brokers' Association of London (for selling brokers, who auctioned the tea, and guaranteed payment to their principal) and the Tea Buying Brokers' Association (as the name suggests, for buying brokers).³³ While Britons were not great coffee drinkers, London was an important centre for coffee dealing from the nineteenth century because of the banking, insurance and shipping services located there.³⁴ The rules of the Coffee Trade Association of London governed some sales in Mincing Lane.³⁵

Separate from dealings in other commodities were the auction sales for wool from Australia, New Zealand and South America. These were conducted in London from the first part of the nineteenth century, after 1875 at the Wool Exchange in Coleman Street in the City of London. Prior to the First World War European and American buyers took around half the quantity sold there.³⁶ As with other commodity auctions, catalogues were prepared for each sale, briefly describing the lots to be auctioned and stating the dock or warehouse where they could be inspected. From the late nineteenth century auctions conducted in wool-producing countries like Australia and New Zealand assumed greater importance. It was the same story with tea – auctions

²⁹ *Ibid.*, 61–62. ³⁰ 296–299 below.

³¹ See Port of London Authority, Dock & Traffic Manager's Office, *Tenth Report of Research Committee*, 1934, 85–98, Appendix 9.

³² US Department of Commerce, Bureau of Foreign and Domestic Commerce, *Market Methods and Custom and usages in London*, Special Consular Reports No. 86, Washington, 1923, 66. *Willers Engel & Co v. E. Nathan & Co Ltd* (1928) 30 Ll L Rep 208 turned on the association's invoicing back terms. For the counterpart association in Liverpool: *Aune v. Cauwenberghe & Fils* (1938) 60 Ll L Rep 389.

³³ Monopolies and Restrictive Practices Commission, *Report on the Supply of Tea*, London, HMSO, 1956, 10–11.

³⁴ S. Topik, *The World Coffee Market in the Eighteenth and Nineteenth Centuries, from Colonial to National Regimes*, Department of History, University of California, Irvine, Working Paper No. 04/04, 2004, 26.

³⁵ *cf. Jurgenson v. F.E. Hookway & Co Ltd* [1951] 2 Lloyds Rep 129.

³⁶ J. Clapham, *The Woollen and Worsted Industries*, London, Methuen, 1907, 97.

being held in producer countries like Ceylon (Sri Lanka) and India – although important auctions continued to be held in London. In the twentieth century faster transport and communications, the development of grading and standards for commodities, and the growth of larger, integrated businesses all led to the decline of the London commodity auctions. After 1945 London's place as a world centre for trading physical commodities was past.³⁷

(ii) Trade Associations, Standard Form Contracts and Market 'Plumbing'

None of the Baltic Exchange, the London Commercial Sale Rooms, Plantation House or the other London commodity exchanges set the rules for trading in commodities. They provided the venue and, in the case of the Baltic, regulated membership. It was the trade associations, formed from the last quarter of the nineteenth century, which developed (or indorsed) standards, drew up rules and regulations and drafted the standard form contracts to govern commodity trading. In addition, traders, trade associations and others like the banks were responsible for institutional developments such as the establishment of clearing systems, which are the essential 'plumbing' for any sophisticated market. Of prime importance was the London Produce Clearing House (LPCH), which initially cleared futures dealings in coffee and sugar, later wheat, maize, pepper, rubber, raw silk, silver and indigo. After several metamorphoses it is, today, the LCH Group, which is an international multi-asset clearing house covering financial products and commodities.³⁸ The counterpart for clearing payments was the London Bankers' Clearing House (Chapter 6, 6.4).

The London Corn Trade Association (LCTA) was formed in 1878, and by the early twentieth century most international dealings in grain were on the standard form contracts which it drew up and according to the standards which it collected or endorsed for reference purposes in the case of disputes.³⁹ LCTA's membership was drawn from the wide range of parties concerned with the international grain trade – brokers, importers, shippers and millers. In its work it was in close contact with other interests, shipping, insurance and banking, but government rarely.⁴⁰ By the early twentieth century LCTA also had standard form contracts for dealing in grain futures, although the internationally significant grain futures market of the interwar period was in Liverpool.⁴¹

Following LCTA there was a profusion of trade associations, including the London Cattle Food Trade Association (1906), the London Oil and Tallow

³⁷ R. Hartley, *No Mean City*, London, Queen Anne Press, 1967, 101. ³⁸ 89 below.

³⁹ 302–308, 312–313 below.

⁴⁰ J. Sgard, 'The Simplest Model of Global Governance Ever Seen? The London Corn Market (1885–1914)', in E. Brousseau, J.-M. Glachant & J. Sgard (eds.), *The Oxford Handbook of Institutions of International Economic Governance and Market Regulation*, Oxford, Oxford University Press, 2019. Sgard notes the membership of Dreyfus Freres, the leading French grain dealer of the day. But see the role of the National Federation of Corn Trade Associations: 302n below.

⁴¹ 81–82 below.

Trades Association (1910), the London Copra Association (1913) and the Rubber Trade Association (1913).⁴² The Rubber Trade Association had standard form contracts, a certification process (before rubber could be considered good tender on a contract, its standard had to be certified) and rules for the settlement of forward dealings.⁴³ There were four trade associations for sugar, reflecting its different origins (beet, cane sugar) and condition (raw, refined sugar). All four comprised buyers and sellers. For raw sugar the Beetroot Sugar Association and the Sugar Association of London were established in 1882; they later amalgamated.⁴⁴ All associations had their own rules and regulations. Along with rules for beetroot sugar contracts were those for storage, clearing and futures dealings in the commodity. The Refined Sugar Association followed in 1891.

By contrast with London, the two leading trade associations in Liverpool, for cotton and grain, did not rely on other organisations to house their trading activities. Eventually, they had their own venues: the Liverpool Cotton Exchange in Exchange Flags and the Liverpool Corn Exchange in Brunswick Street.⁴⁵ A special market for cotton developed relatively early and was the main exemplar for the development of international commodity markets in Britain.⁴⁶ Liverpool had become the most important cotton port in Britain, with the major cotton (textile/spinning) mills within sixty or eighty miles in Manchester and Lancashire connected to it by canals, rivers and later rail. Its pre-eminence as a port of entry was guaranteed once the United States became the major supplier to Britain of raw cotton. The industry comprised mainly small manufacturers who faced prices for cotton which fluctuated considerably with commercial circumstances, movements in fashion, rumour and war.

The Cotton Brokers' Association, formed in Liverpool in 1841, gradually functioned to regulate cotton trading. Until 1863 the association had no written rules and the thriving market was based on accepted practice, what lawyers would characterise as custom and usage. The massive speculation in cotton accompanying the American Civil War promoted the adoption of the first edition of 'The Constitution, Law, and Usages of the Liverpool Cotton Brokers Association'. A further version followed in 1869, and by 1878 there were printed contracts, with rules on the back, for American cotton.⁴⁷ The Cotton Brokers' Association merged with a rival Liverpool Cotton Exchange to

⁴² H. Barty-King, *Food for Man and Beast*, *op cit*, 39–43; A. Coates, *Commerce in Rubber*, Singapore, Oxford University Press, 1987, 186. The Timber Trade Federation was already in existence: for its standard form contracts drawn up around this time: B. Latham, *History of the Timber Trade Federation of the United Kingdom*, London, Benn, 1965, 37, 54. See 304n below.

⁴³ US Department of Commerce, *op cit*, 63–64.

⁴⁴ Beetroot Sugar Association, *Rules and Regulations*, 4th ed., London, 1892, Constitution, II. (Kindly provided by D. G. Moon, Sugar Association of London.) The objects were 'to provide for the proper conduct [of the beetroot sugar trade], and particularly to provide rules for sampling, weighing, analysing, and for the supervision of these operations; and for the settlement of all differences that may arise in carrying out of Contracts'.

⁴⁵ 11, 363 below. ⁴⁶ S. Chapman, *Merchant Enterprises in Britain*, *op cit*, 76.

⁴⁷ 301 below.