

THE HISTORY OF FACTORING
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INTRODUCTORY DISCUSSION

A. *Roots of Early American Factoring Law Grounded in the Practice of English Factors in the 14th, 15th, 16th, and 17th Centuries*

The authors of *American Factoring Law* (2009) have an extensive discussion of more than 100 pages in the Main Volume of their book, covering the history of factoring in America from the time the Pilgrims arrived in the 1620s, forward, to the present day. The focus of their book is, necessarily, the history, practices, and law governing American factors.

As discussed in *American Factoring Law*, modern factoring, where the factor acts as a purchaser of client accounts, rooted in the business practices of *del credere* factors at common law, arose around the turn of the twentieth century in New York City.¹ In the 1960s, modern factoring was exported from the United States back to Europe, as described briefly below.

Several readers of *American Factoring Law* indicated that they found the discussion of the history of factoring in America by the authors, David Tatge, David Flaxman and Jeremy Tatge, to be of significant interest and suggested that an elaboration on the history of factoring prior to its arrival in the United States would be well received. Accordingly, in the 2011 Supplement to *American Factoring Law*, published April, 2011, the authors offered an overview of the history of the roots of early American factoring, with principal emphasis on the business practices of textile, corn and hop factors in England in the 14th-17th centuries. International Factors Group is pleased to reproduce this material, below, with permission of the publisher, BNA.

Many factors credit the Mesopotamians with creating the laws, business structures, and business practices which underlie, at least in part, modern factoring:

The history of invoice factoring can be traced back to the Mesopotamians, who are credited with being the cradle of civilization and the first to generate business code structures and government regulations for commerce. Experts have evidence that proves 4,000 years ago, the Mesopotamians also created the concept of factoring. Following Mesopotamia, there is evidence that the Romans sold promissory notes at discounted prices. Roman merchants also enlisted the services of collectors

¹See Section IV.A.5, Main Volume.

to settle trade debts. But factoring as we know it today got its start in the Middle Ages.²

The financing extended to the Pilgrims by London factors³ had its roots in the business practices of English factors, many of whom were engaged in the cloth trade, in the fourteenth through seventeenth centuries, as England grew from an agrarian economy to a modern commercial economy. Those English factoring practices appear to have been imported into England from Italy and other places on the Continent and were grounded, at least in part, in the practice of factoring during the Roman Empire.

Melvyn Westlake states:

Factoring, in some form, dates back to antiquity. A factor was a key figure in the economy of the Roman empire. Wealthy senators and nobles entrusted the management of their property and their agricultural produce—corn, wool, oil—to agents who received a commission for their services. The agent was often called a factor. Sometimes he would be responsible for finding buyers for the produce of the large estates, which often entailed making long sea voyages. In such cases, he might pay the nobleman in advance. The Phoenicians, another mercantile people, also adopted such methods of trading.

Roman factors were, themselves, often rich—and sometimes unpopular—men. Claudius, the Roman Emperor, forced a number of corn factors to help finance his scheme for converting Ostia into a safe winter harbor. This scheme he hoped would eliminate the danger of corn famine, as the corn could be more easily shipped from Egypt and Africa. It seems the factors were not well disposed toward this idea as it reduced their grip on the trade. Yet Claudius, it appears, obliged them to finance the harbour to the extent of 1,000,000 gold pieces.

The commission-agent form of factoring was recorded again in the 13th century. By the beginning of the 14th century it was widely conducted in Northern Italy. Where the commission agent sold on credit, he probably also took credit risk as otherwise he might have been tempted to extend over-generous terms to buyers that were poor credit risks. The principal

²Diversified Financial Services, History of Invoice Factoring, <http://www.dfsfactoring.com/history-of-invoice-factoring.html>.

³The factoring agreement with respect to this financing was executed within a few years of the Pilgrim's landing at Plymouth Rock, in 1620. Therein, it was agreed that three English factors, in London, would purchase merchandise in England; shoes, cotton, woolen cloth, linens, bedticks, blankets, salt, spikes, nails, tools, pistols, muskets, powder and shot, to be sold by their Plymouth partners, on behalf of the Massachusetts Bay settlers, or traded with the Indians or European fishing vessels which came to America's shores. In turn, the London factors would receive and sell for their Plymouth partners' shipments sent to England, from America, of beaver, bear, mink, fox and other furs, as well as fish and timber. See the introductory text, Main Volume, at 7, referencing the London factors as Messrs. James Sherley, a goldsmith, John Beauchamp, a salter, and Richard Andrews, a ship owner.

would quite likely have lived in a different town to the agent-cum-factor, perhaps even in another country. It would thus be impossible for him to appraise credit risks.

Later the term “del credere” appeared. This was a term borrowed from Lombardian acceptance bankers; the factor would stand “del credere” [from the Italian “of belief” or “trust”]. In 1771 a Swedish economist, John Hartman Eberhardt, defined the term in the following manner: “del credere is the undertaking on the part of a commission agent to assume responsibility for the credit worthiness of the buyer or his ability to liquidate his debt on the due date.”

For this assumption of the credit risk, the agent would be compensated by a special “del credere” commission. There is a clear parallel with modern “maturity” factoring. Factors placed in different markets to buy and sell goods on commission contributed substantially to the expansion of trade which developed from the early 16th century. Factors followed the Portuguese out to the East Indies. The foreign trade of flourishing towns like Milan, Genoa, Lyons, Madrid and Barcelona depended heavily on the services of factors acquainted with local markets, who bought and sold on a commission basis. They accounted for much of the world trade in raw materials such as wool, indigo, hemp, cotton, iron, sugar, corn, rum and tobacco.⁴

The factors of Italy included Jewish merchants who had fled Spanish persecution in the 1300s and 1400s:

Jews, fleeing persecution in Spain in the 1300s and 1400s, fled to Italy. In Italy, Jews were not allowed to hold land, but were still given the opportunity to engage in the local commerce in grain crops. Jews, who were not bound by the local Christian laws of usury, charging a fee to use money, gave high-risk loans to farmers against the crops in their fields. Originally, they purchased the grain sale rights against the coming harvest. As in any venture, where there is profitability, there is expansion. These early merchant bankers began to advance money against the delivery and payment of grain shipped abroad and to distant trading ports. Soon, the profitability of this endeavor opened the floodgates to a new segment of society and created a new industry within the trade industry of merchants who solely bought and traded grain debt instead of the actually [sic] grain itself.⁵

⁴MELVYN WESTLAKE, FACTORING 41–42 (Pitman Publishing, Ltd. 1975).

⁵Diversified Financial Services, History of Invoice Factoring, <http://www.dfsfactoring.com/history-of-invoice-factoring.html>. Other factoring literature likewise indicates that the first factors were early Italian corn factors. See also New Edge Capital, The History of Factoring, <http://newedgecap.com/factoring/history.html> (“The common practice of factoring as we know it today started some 600 years ago, with its roots in what is now called the merchant banking industry. These factoring forefathers were Jews fleeing persecution from

It seems likely then that factoring was imported into England from the Continent. This is not surprising. By 1290, at the height of its medieval economic expansion, England was primarily an agrarian economy, on the lesser fringes of world commerce, and relied on imports of luxury goods, manufactured goods, and bullion from more developed economies, principally Flanders and Italy.⁶ Other centers of commerce at that time were Northern France and Constantinople.

In the early fourteenth century, Italian capital was moved to England to take advantage of the higher interest rates prevailing there at that time. This capital replaced that of Jewish lenders who had been protected by the Crown from the time of Henry I (1100–1135) but were expelled by Edward I in 1290 amid growing anti-Semitism.⁷ The business of factoring likely came to England with the influx of Italian capital and the growth in trade between England, Italy, and the other European nations, as well as from immigrants to England from these countries who were familiar with the practice. Later in the fourteenth century, interest rates in England and elsewhere in Europe fell, probably due, in large part, to the significant loss in population from the plague epidemics of 1348–1349 (the Black Death), 1361, 1369, and 1375, which reduced England's population by half.⁸

The most well known early English factors operated in the wool and textile industry.⁹ On May 1, 1326, by royal ordinance, King Edward III extended his protection to Flemish immigrants who settled in depopulated counties in the north of England.¹⁰ The same decree encouraged the nascent English textile and wool weaving industry by holding that “no person wear foreign cloths, except royalty, nobility, and those enjoying a rental income of £30 a year.”¹¹

As the woolen industry grew, along with the demand for related exports from England, weavers from Yorkshire and other textile regions were no longer content to sell their goods to itinerant merchants who bought from the clothier's on a house-to-house basis. Rather, the local clothiers now preferred to sell their larger volumes directly to London merchants who could store cloth on-site. Many of these merchants were engaged directly in the export trade. To facilitate trade, in 1397 Blackwell Hall in London was acquired by the Mayor and Commonality of London to serve as a meeting and a market place for the country clothiers, as sellers, and drapers and export factors, as buyers.

Spain to Italy who purchased the right to sell a farmer's grain at harvest in exchange for cash advanced during the planting season.”).

⁶Bruce M.S. Campbell, *Factor Markets in England Before The Black Death*, available at <http://www.iisg.nl/hpw/factormarkets.php>. (The Black Death occurred in 1348–1349.)

⁷*Id.* at 23–24, 27.

⁸*Id.* at 26.

⁹Factors also operated in, among other trades, corn and hops. *See infra*, this section.

¹⁰William Hurd Hillyer, *Four Centuries of Factoring*, 53 Q.J. ECON. No. 2, at 305 nn.1 & 2 (MIT Press 1939) (citing H. Heaton, *Oxford Hist. Studies* vol. x (Oxford 1920) and edict Edward iii, Dec. 12, 1336)).

¹¹*Id.* at 305.

Blackwell Hall, adjoining the Guildhall, was originally built in 1243 by Adam Basing, Sheriff of the City of Nottingham. In the mid-fourteenth century it came into the possession of Thomas Bakewell and became known as Bakewell Hall. However, in 1397 King Richard II, in consideration of £50, licensed the mansion to John Fresh, William Parker, and Stephen Spelman, mercers,¹² and they conveyed “the said messuage to the Mayor and Commonality of London by the name of Bakewelle Halle.”¹³ Thereafter, its name was soon corrupted to “Blackwell Hall,” and it served as the hub of English textile factors until the early nineteenth century.¹⁴

The evolution of the English textile factors at Blackwell Hall is described as follows:

[T]he clothworkers, as original consignees of the goods, naturally gravitated into the position of middlemen between buyer and seller. They were frequently besought by clothiers, most of whom were possessed of limited capital, to make cash advances upon the goods, pending the next favorable market. This, of course, was in the nature of a factoring transaction, and paved the way for a distinct class, neither clothworkers nor drapers, who made merchandise advances, warranted the solvency of buyers and were true factors in the sense now generally understood.

It is probable that this class was first recruited from the ranks of the foreign factors, who drew on their principals abroad at six months or even longer, and then anticipated these bills for a consideration. Eventually, however, as the need for the factor’s specialized services grew, the business of supplying such services to the clothiers became a distinct calling.¹⁵

As further described by F.A. Russell:

¹²A mercer is a 13th century British term for a dealer in expensive fabrics and comes from the Anglo-French “merz” (merchandise). See www.miriamwebster.com (discussing the etymology of the term).

¹³See Hillyer, *supra* note 10, at 306.

¹⁴See Conrad Gill, *Blackwell Hall Factors, 1795-1799*, 6 ECON. HIST. REV. No. 3, at 268 (Economic History Society 1954). Blackwell Hall was ultimately torn down in December 1819. (Interestingly, it appears that law and bankruptcy courts were then constructed on its foundation.) So widespread was their influence over this period that the cloth factors who plied their trade there were commonly known as “Blackwell Hall factors,” with their principal stock in trade being West of England broadcloth from Gloucester, Somerset and Wiltshire. See, e.g., “Eshton Hall” at KIRBY MALHAM.INFO, <http://www.kirbymalham.info/KMI/winterburn/eshtonhall.html>, noting that “Eshton Hall, formerly the residence of the ‘De Esshetons’ (Ranulf de Eston was living in 1186, and John de Eston contested the right to the Earldom and estates of Albemarle with King Edward the First,) passed into the Clifford property, and was sold by George, Earl of Cumberland, in 1597, to Robert Bindloss, Esq., of Borick, and in 1646 the hall, estate, and manor were sold by Sir Robert Bindloss, Bart., to Mathew Wilson, of Kendal, a merchant clothier, and Blackwell Hall, factor, of Coleman Street, in the City of London, ancestor of the present owner.” See also Minute Book: October, 1698, Calendar of Treasury Books, Volume 14: 1698-1699, at 16–26 (Institute of Historical Research 1934), available at British History Online, <http://www.british-history.ac.uk/report.aspx?compid=82990&strquery=Busfield> (site last visited May 18, 2010), referring to “Mr. Mulcaster, servant to John Busfield, a Blackwell Hall factor, near Blackwell Hall.”

¹⁵See Hillyer, *supra* note 10, at 307.

A Blackwell Hall Factor was a person holding a “rest,” or stand, in Blackwell Hall, entitling him to act as an agent for the woolen manufacturers. The Hall was situated on the eastern side of Guildhall Yard, and the western side of Basinghall Street close to the present Wool Exchange and was the warehouse and market place for the storage and sale of all sorts of woolen fabrics. Blackwell Hall was established as the common market for woolen goods from all parts of the kingdom by an ordinance of 21st Richard II., and this ordinance was confirmed by an Act of Common Council, Aug. 8, 1516, with the addition that Blackwell Hall was the only market for such woolen cloths, and that none were to be sold in London unless the said cloths were first brought to the Hall and there bought and sold, heavy penalties being enacted against any infringement.¹⁶

Initially, some of the commercial functions ultimately assumed by the Blackwell Hall factors were undertaken by members of the cloth workers guild, who enjoyed the exclusive privilege of pitching (displaying) the clothier’s (producer’s) cloth until it was sold, to either drapers or to foreign factors, i.e., local representatives of foreign merchants.¹⁷

Each clothier adopted a certain mark, trademark by which his cloths were distinguished; certain clothier’s cloths attained to a reputation for special good qualities and met with readier sale than those less reputed.¹⁸

The cloth workers, as initial consignees of the textiles manufactured in the West and North of England, were natural middlemen between buyer and seller.

As the economic clout and market power of the Blackwell Hall factors grew considerably, the factors displaced the clothiers, on the one hand, and the drapers¹⁹ and merchants, on the other, obviating any contact between these two groups. Moreover, the factors began to trade not only in cloth but also in the raw materials from which the cloth was made. Thus, the English cloth factors supplied both the raw materials, such as Spanish wool, the credit, and the market, without which the clothiers could not function; in other words, the clothiers were very much dependent on the factors for success. The success of factors led, however, to resentment among clothiers that a factor could either make or break them.²⁰ These circumstances led to legislation to regulate the Blackwell Hall factors. Based

¹⁶See R.A. Russell, *Blackwell Hall Factor*, NOTES & QUERIES Vol. s12.-VI (106), at 153 (Oxford Journals April 24, 1920), available at http://www.archive.org/stream/s12notesqueries06londuoft/s12notesqueries06londuoft_djvu.txt.

¹⁷See Hillyer, *supra* note 10, at 307 (citing E. Hatton, GENT.: MERCHANT’S MAGAZINE at 211–13 (London 1726)).

¹⁸RAY WESTERFIELD, MIDDLEMEN IN ENGLISH BUSINESS PARTICULARLY BETWEEN 1660 AND 1760 281 (Yale University Press 1915) (footnote omitted).

¹⁹A “draper” is a now largely obsolete term for a wholesaler or retailer of cloth, mainly for clothing, sold from a draper’s shop.

²⁰See Gill, *supra* note 14, at 268 n.2 (citing WESTERFIELD, *supra* note 18, at 296–304, and J. SMITH, MEMOIRS OF WOOL Vols. I & II (London 1747)). Insolvency and credit were important considerations to be reckoned with in the cloth trade. During the period from 1619 to 1622, for example, the clothiers of Suffolk

on various complaints, in 1623 the London City Council enacted legislation forbidding traffic by middlemen in Worcester or Reading cloths. In 1661 the City Council declared that all future Blackwell Hall factors as well as brokers and their ledgers had to be approved by the aldermen before the factors could ply their trade.

By 1660, the nonresident clothiers were not permitted to bring their woolens for display and sale to Blackwell Hall, and there were also certain rules and customs which determined when business was allowed to take place there. The market did not open until Thursday to allow clothiers from remote parts of the country ample time to come to London. The market was open only on Thursday, Friday, and Saturday. Whatever cloths which could not be sold by the clothier during these days were stored in the Hall until a future date when the clothier next returned.²¹

After factors were recognized as a distinct commercial force, the management of Blackwell Hall was changed by an Act of the Common Council dated June 20, 1678. The supervision of Blackwell Hall was given to a keeper of the hall and various clerks and porters; they in turn were subject to the president, treasurer, and governors of Christ's Hospital. These officers kept a register of the factors and of the owners, buyers, and sellers of the cloths that were sold at the Hall. There was also a system in place to prevent nonresidents from buying in the Hall. A report was sent to the Hospital of the factors who were dealing in the Hall, including any infractions by factors that might have been committed, on a monthly basis.²² Furthermore, under the Act, all cloths of a certain type could be sold only at Blackwell Hall.

An Act of Parliament, passed in 1696 during the reign of William III, also sought to regulate the cloth factors. This legislation entitled "An act to restore the Markett att Blackwell-Hall to the Clothiers & for regulating the Factors there"²³ contained several measures. It required that the governors of Blackwell Hall observe the rules promulgated and set market hours; required that no factor or any other person, other than the owner of the cloth, could sell or market cloth outside the market of Blackwell Hall; required that hall keepers maintain a weekly register containing, among other details, the names of owners and buyers and the time of sales; required that factors at Blackwell Hall give accounts of the effects in their hand, cloth sold, and money due to the clothiers; and provided for various penalties. All cloth received by the factors from the clothiers was deemed to have been sold after eight days, to avoid factors accepting cloth consigned by the clothiers without the intention to market it with sufficient vigor. Moreover, the legislation which was passed to placate the clothiers also provided for curbs on perceived credit abuses. Under the new

reported that they lost more than £30,000. When they sold cloths to certain merchants, both at Blackwell Hall in London and also to merchant exporters in Colchester, Ipswich, Norwich, and Yarmouth, who, in turn, sold on credit, the buyers and, in some cases, the merchants went bankrupt. WESTERFIELD, *supra* note 18, at 292–93.

²¹WESTERFIELD, *supra* note 18, at 279.

²²The Hospital had a Board of six members whose jobs included looking into any offenses and reporting the perpetrators to its general court. All fines were paid into its treasury.

²³Chapter IX. Rot. Park. 8 & 9 Gul. III, p.2 nu. 3, *available at* British History Online, <http://www.british-history.ac.uk/report.aspx?compid+46857>.

legislation, factors who sold on credit to merchants were obligated to receive and deliver to the clothiers, within 12 days of the sale, a promissory note for the balance due from the buyer, on pain of a penalty equal to double the amount owed, and any contract to the contrary was void.

However, some clothiers charged, the Blackwell Hall factors soon used their market power to evade the statute and, in doing so, began to factor cloth not on a recourse basis, as before, but now on a nonrecourse basis, taking a 2½ percent commission for guaranteeing to the factor's clothier clients the credit and financial responsibility of the end buyer.²⁴ As Ray Westerfield reports:

The effect of this statute and the devices by which it was evaded and nullified are so lucidly told by one of the abused clothiers, that he deserves quotation *in extenso*, as follows:

“For little while this Act had its desired effect; these notes were immediately returned to the clothier, who carried them to market for wool, etc., and by that means, made them answer in Trade almost as well as cash itself. The factors thus stripped of the most valuable part of their business, immediately concerted such measures as rendered the Act ineffectual—This was done, by tampering with those of the Trade whose circumstances were most precarious who, induced by the Promise of the speedy Sale of their Goods, prior to those of any other Maker, were easily prevailed upon to forego the Advantage of the Notes granted to them by Parliament. This fatal Precedent being once set, the Factors instantly exacted a like Compromise from all the rest; and if any refused not one Piece of their Cloth was sold. This important Point carried . . . they again allowed the Drapers such unreasonable Credit, that it was impossible for the most substantial Clothier to carry on the Trade, while the Returns were so slow and precarious. On an universal Complaint therefore of this grievance, they graciously condescended to insure the Debt to be paid twelve Months after it was contracted; but in Return of so great a favor, insisted on two and a half percent as a Reward; and if any was rash or stubborn enough to disrelish or oppose this new Imposition, he had the Mortification to wait six months longer for his money, that is to say, a year and a half in all.” Though this quotation savors of hostility it is testimony sufficient that the credit practices of the seventeenth and eighteenth centuries were akin and alike, and were in part used to press the clothier and merchant into alignment with the factor;

²⁴The nonrecourse factor's practice of taking a 2.5% del credere commission on sales, to guarantee the credit of the buyer, ultimately found its way to New York around 1814. See introductory text, Main Volume, at 7; see also Section II.B.1, Main Volume, at 25, and Section IV.A.1, Main Volume, at 50–51 & n.126. Some authorities state that these commissions became known as “del credere” commissions in English commercial practice around 1780. See Section I.E, Main Volume, at 10, n.15 (quoting R.S.T. Chorley, *Del Credere*, 45 LAW Q. REV. 221, 222 (1929)). Ray Westerfield's work, *supra* note 18, discussed immediately below, indicates that practice of factors paying these commissions in the English cloth trade came into use almost a century earlier, around 1700 or so, even if the term “del credere” did not.

and though subject to obvious abuses the credit system operated to the distinct advancement of the cloth and wool trade by synchronizing the times of payment.²⁵

Indeed, the disgruntled clothier, Mr. Trowbridge, went so far as to characterize the English cloth factors as “useless drones in the human hive.”²⁶

Later, clothiers engaged in a wage dispute with their laborers in 1737 accused the Blackwell Hall factors of artificially holding down prices, making it impossible for the clothiers to pay a reasonable wage.²⁷ Eventually, however, calm seems to have been restored and subsequent economic difficulties arising from wars and bad harvests were not attributed by the clothiers to the Blackwell Hall factors:

It may be concluded that if the practices of these thirty or more men had become so intolerably obnoxious as the epithetic phraseology of the pamphleteer suggests, either this paltry number of factors would have succumbed to the host of assailing clothiers and corrections have been allowed or means would have been devised whereby a set of interloper or competitive factors would have arisen. The simple fact is that the factors were doing a real service to the wool and woolens trade, a service that was quite indispensable and that grew more so as the volume of cloth handled increased.²⁸

Thus, evolving over time into a commercial role of their own, the Blackwell Hall factors: (1) received, stored, and sold cloth for their clothier clients; (2) provided client financing via advances against the value of the consigned goods, until they could be sold; (3) advised the clothier of the end-buyer’s financial responsibility, and vice versa; and (4) for a fee, warranted the solvency of the buyer.²⁹ Westerfield summarizes this evolution:

The relations of the clothier to Blackwell Hall and to the merchant and draper underwent a decided and important change during the Puritan régime and the early years of the Restoration. Before this date, the Clothworkers’ Company had been the chief assistants of the clothiers at the Hall; they mantled, folded and put in buckram and packed the cloth sent or brought up by the clothier; if the clothier could not stay until the market served him best he left his cloths in the care of these clothworkers till some other market, possibly six to twelve months; hence sometimes they

²⁵WESTERFIELD, *supra* note 18, at 299–300 & n.1 (footnotes omitted) (quoting “Case of the Clothiers and Weavers,” J. SMITH, MEMOIRS OF WOOL Vols. I & II 310–11 (London 1747)) (and “written by one who signed himself Trowbridge and first published in a paper called ‘Old Common Sense’ from which it was copied in the Gentlemen’s Magazine, q.v. 1739; 89-90,126”).

²⁶Trowbridge, *Conclusion of Old Common Sense*, GENTLEMEN’S MAGAZINE, Vol. IX, at 126 (Feb. 24, 1739).

²⁷GILL, *supra* note 14, at 268.

²⁸WESTERFIELD, *supra* note 18, at 303.

²⁹See Hillyer, *supra* note 10, at 307.

authorized the clothworkers to sell the cloths left in their charge; and lastly, if the clothier wanted credit it was either furnished to him by the clothworker or this latter advised the merchant of the clothier's financial responsibility. In 1635 the clothiers of Suffolk and Essex complained to the Privy Council against an order which was designed to stop these clothworkers from acting as agents for the country clothiers for selling cloths left with them. The order had been secured by the drapers and merchants viz. "that no one should sell any woollen cloths either by wholesale or by retail but themselves."

These practices and services indicate the opportunity and functions of a specialized class which established themselves in the business of Blackwell Hall about 1660. They were known as factors and received public recognition in the regulations of the Hall laid by the Act of Common Council of 1678.

These factors sprang from various professions, having served apprenticeships to other trades, and it was remarked that one could choose "a Factor from almost any profession, an Oyl-man, a cloth-drawer, a Tobacconist, etc." In 1677 the *London Directory* reported by name thirty-eight Blackwell Hall factors, none of whom were men of title, and who lived mostly on Basinghall Street. The author of the *Clothiers Complaint* in 1692 said there were about thirty factors. It seems that they grew rapidly into wealth and power, for as early as 1677 instances were given where some had risen from low circumstances to be worth from £5,000 to £10,000 the man, and by 1685 some of them were worth £40,000 or £50,000.

The first factors were likely some clothiers or clothworkers with whom other clothiers had left their residue of cloths from one market till a later market. As stated above, the clothier sometimes authorized the keeper to sell the cloths in the interim, specifying a certain price at which he might sell. This authorization was the wedge by which the factor entered the trade and seized upon his limited function. In order to make sales the keeper would abate the price a few pence per yard below the price specified by the clothier. This difference in price was sufficient motive for the preference which the buyer thereafter showed for buying from the keeper. To secure sales the clothier was then forced to sell through the keepers, who set up as regular factors and thus "usurped the sole power of selling the clothier's cloth, both for what price, and for what time, and to whom they pleased."

Several circumstances at once operated to strengthen and establish the factor in this his so-called *usurped* place. The convenience realized by both clothier as seller and by merchant or draper as buyer, through the instrumentality of this factor made them prone to a passive compliance, for they could then devote themselves to their more proper employments. But this separation of clothier and merchant lessened the merchant's judgment of cloth, a judgment which his daily practice of examining cloth in the Hall had

heretofore trained and maintained, and consequently the merchant became dependent upon the factor as a specialist in judging the qualities of cloth. The factor used his profits sometimes to buy materials and employ woolworkers and became in part a clothier; this gave him an economic advantage by which he could undersell any clothier who persisted in selling his cloth himself and could force himself into the clothier's employ. And further, the factor could make or break a clothier by partiality in the time of sales and in the longer or shorter period during which they retained the proceeds; naturally they favored the richer and larger dealers and the poorer became very subservient to their factors.

The factors developed an extensive system of business credit, which in turn furthered their dominance in the wool and woolens trade. The first occasion of this arose through the necessities of foreign trade. A six-months' credit was given to the merchant for the payment of the cloth he bought at the Hall. The merchants paid their purchases by drawing drafts on their foreign correspondents, but it was needful that the bills of lading be received abroad before the drafts could be accepted with safety. During this interim the credit was allowed. But it appears the standard rule of six months' credit was not adhered to and payments to the clothiers were dilatorily made in nine, twelve or fifteen months. The clothier was forced in turn to buy his materials on credit; and so on through a succession of buyers. In case the clothier fell into such straits that he was compelled to draw upon the factor before the sales' proceeds were due or before the factor saw fit to make payment, the factor was in a position to assess extravagant rates for the advance. The holding-up of these proceeds was a source of much profit. They were invested in Spanish wool; a monopoly of the purchase of this article was gained by them; the clothier was then constrained to secure his Spanish wool from the factor's warehouse and have it charged on his account; since a clothier used on an average about eighty packs a year and the factor demanded £4 per pack for service, the factorage for the foreign wool alone averaged £320 per annum per clothier; and this was really a charge paid by the clothier upon his own money. On the other hand, this delay in turning over the proceeds of sales gave the factors a like economic control over the merchants "for the Factors having so great a stock of the West Country Clothiers in their hands . . . can give what credit they please, and can, and do make whomsoever they please Merchants or turn Merchants themselves"

This long credit introduced and forced by the Blackwell Hall factors had a further effect in the fact that it drew over an "abundance of Interlopers, or Foreign Factors, from Holland, the Hanse Towns of Germany, Flanders, France, Sweden, Etc." By this credit they were "enabled to make themselves Masters of Goods upon their Principals abroad, whose service they court(ed) before they desire(d) their bills for Payment." An intimacy and friendship

seems to have grown up between the home and these foreign factors and they worked together in the prosecution of their credit operations.³⁰

The extensive role of the Blackwell Hall factors in English commerce of the period is seen from a simple Google search of “Blackwell Hall factor,” which brings up numerous cites. One, by way of example, concerns insurance issued by a London insurer established by Charles Povey in 1708, known as the Exchange House Fire Office. This enterprise was later taken over by the Company of London Insurers in 1710 and constituted a partnership known as the Sun Fire Office, which insured “John Ellsworth, a Blackwell Hall factor, in Jones Rents, adjoining Swan. Alley in the parish of St. Stephen, Coleman Street.”³¹ Another example is a “1 February 1746—Indenture between (i) Ronjat Lehook of London Blackwell Hall, Factor and (ii) Methuselah Favell of Bromley, schoolmaster. Lease of Masonshill, Bromley for 21 years from Lady Day 1747 at £25 per annum,” covering the school at Mason’s Hill, Bromley.³²

Factoring in England was by no means limited to the early cloth factors of Blackwell Hall. By the early seventeenth century, economic power in England became increasingly concentrated, domestically, while the scope of international trade continued to rise. Some companies trading in this sphere were large and well known. Joint-stock companies included the East India Company and the Royal African Company, owned by equity stockholders and supplemented by borrowing from bondholders, whose charters gave them a monopoly on commerce with India and Africa, respectively. These companies, with their paid staff and professional managers, did not differ significantly from modern corporations. English commerce also included regulated, nonstock entities, such as the Levant Company (trading in the Eastern Mediterranean) and the Eastland Company (trading in the Baltic) which charged member merchants a fee to participate in their enterprises. Individuals and partnerships of various forms competed with these leviathans with great vigor and success. These developments and the growth of London as the principal center of international trade resulted in a rise in the number of factors. Native merchants, as well as foreign merchants who immigrated to London, acted as agents for their clients in overseas ports and, also, in England as goods from England’s colonies and from other nations were brought into England for sale. It is in this period that, a few years after the Pilgrims landed in Massachusetts in 1620, three English factors financed enterprises by the Pilgrims.³³

One author summarizes the global nature of English factoring in the period as follows:

English trade was thus becoming increasingly open to all-comers in the areas of former monopoly, as it was in most other parts of the world.

³⁰WESTERFIELD, *supra* note 18, at 296–98 (footnotes omitted).

³¹See http://www.nationalarchives.gov.uk/a2a/records.aspx?cat=076-sun_2-59&cid=-1#-1.

³²See “Catalogue of Harris Manuscripts relating mainly to Chelsfield 1503-1914,” KENT ARCHAEOLOGICAL SOCIETY, <http://webcache.googleusercontent.com/search?q=cache:Pea7-fNEH50J:www.kentarchaeology.org.uk/Research/01/CHL/02.htm+%22ronjat+lehook%22&cd=7&hl=en&ct=clnk&gl=us&source=www.google.com>.

³³See *supra* note 3.

Here, individual merchants or partnerships were free to trade as they wished, provided they observed the laws of England and of the countries to which they traded. One result of this freedom was that many more small men traded to such places as Spain, Portugal, France or Holland and to the English colonies in America, particularly in the earlier part of our period. However, there were economies to scale in overseas trade, as there were in many industries, and what evidence we have suggests that, by the early eighteenth century, nearly every branch of English trade was being engrossed into fewer and fewer hands. In the world of the merchants, as in that of the manufacturers, the small man was being squeezed out.

Most merchants at least started as specialists, confining themselves, for instance, to the wine trade and often a particular branch of the wine trade, or to the trade with the Baltic or the Levant, these 'Turkey traders' being almost a synonym for great wealth in the later seventeenth century. Such specialization made good sense, enabling the young man to know everything he needed to know about specialist products, the problems, laws and customs of trading with particular areas, the qualities of his competitors and foreign trading partners, and in general to get the best advantage of his training, which would have often involved the learning of one or more foreign languages.

However, it is clear from inventories that an initial specialization very often overflowed into considerable diversification. The basic form of the Levant trade, for instance, was an exchange of English broadcloth for Turkish and Syrian raw silk and many traders confined themselves to that, with the addition perhaps of some other English exports, such as lead, and a few other Levantine imports, such as cotton and dyestuffs. However, many Levant merchants traded also with Italy, North Africa and especially with Spain, an attractive business which provided cash in the form of pieces of eight, which in turn eased the problems of paying for their main return cargoes of raw silk. Some Levant merchants diversified much further. Some combined Mediterranean trade with re-export to Hamburg or the Baltic; some developed a West Indian business on the side. Some, like Sir Jonathan Dawes, who died in 1672 worth over £38,000, might still have a basic Levant trade at the heart of his business, but actually traded just about everywhere in the known world.

The same patterns can be seen in every other trading area. The Baltic posed a problem for the merchant, since it was unable to absorb very large quantities of English exports, and many traders specialized almost entirely in imports from one particular area, such as John Ferney whose business was devoted to the import of iron and pitch from Sweden. But the very nature of such an unbalanced trade encouraged diversification. Some merchants engaged in a clandestine trade with the Spanish colonies to provide them with a flow of cash to pay for their Baltic imports. Others financed their

Baltic trade through re-export of Asian, Mediterranean or American goods, as did Peter Vansittart, who traded in all three.

The main business of traders to America and the West Indies, the fastest growing section of English overseas trade, was the import of sugar and tobacco in exchange for what was called a 'sortable cargo', a mixed cargo of textiles, clothing, metal goods and furniture, wines, spirits and beer, re-exports of Asian goods and anything else 'that may furnish the tradesman there with parcels fit to fill their shops and invite their customers'. However, these sugar and tobacco merchants diversified like everybody else, often into the slave trade from Africa, a logical direction in which to move since the planters who supplied them with their exports were always complaining that the Royal African Company, the official monopolists, did not deliver sufficient slaves. They also engaged in re-export of their wares to Europe, since England was unable to absorb all of the increasingly large imports, a process which could lead to the sugar or tobacco merchant becoming a Baltic merchant as well.

*These merchants also acted as agents or factors for the planters, selling their goods on commission and providing many other services. They lent money to the planters by allowing them to draw on them for cash, they searched out delicacies unobtainable in the colonies, looked after the planters' children, lobbied parliament and provided information for the Board of Trade which might further their own interests and those of the plantations. Such services played a vital role in linking together the far-flung parts of the English trading empire and were by no means confined to the American trade. 'Most merchants are factors for one another in this shape and reckon it the most certain, though not the most profitable part of their business.' The factorage business and hence the general efficiency of the London market was helped by the large numbers of foreign merchants who settled in London in the late seventeenth century. This influx of Huguenots, Jews, Dutchmen, Germans and merchants like Vansittart from the Baltic was to give the mercantile community that cosmopolitan quality that it has had ever since. Their presence in London also signaled the fact that England had now finally arrived as a trading nation.*³⁴

The same author chronicled the role of the Blackwell Hall factors:

Most wholesalers specialized as middlemen in the market for a particular product. One group of these specialists has already been mentioned, the Blackwell Hall Factors who acted as intermediaries in the cloth trade, selling cloth made in the provinces on commission to exporting

³⁴PETER EARLE, *THE MAKING OF THE ENGLISH MIDDLE CLASS: BUSINESS, SOCIETY AND FAMILY LIFE IN LONDON, 1660-1730* 37-40 (University of California Press 1989) (footnotes omitted) (emphasis added), available at <http://publishing.cdlib.org/ucpressebooks/view?docId=ft8489p27k&chunk.id=0&doc.view=print>.

merchants and to the London woolen-draper, another important wholesaling group. They also supplied the clothiers with raw materials, such as oil and wool, and were often rich enough to give credit to clothier and cloth exporter or draper alike, thus providing an invaluable service to England's largest industry. Such a business obviously favoured the man with a big capital, as indeed was true of every wholesale trade, and as a result the number of factors shrank from about fifty in the late seventeenth century to just a few very wealthy men half a century later. The *Gentlemen's Magazine* summed up the position in 1739: 'The Blackwell-Hall factor, originally but the servant of the maker, is now become his master, and not only his, but the wool-merchant's and draper's too.'³⁵

English factors set out from England for Asia, America, and other places abroad to ply their craft, sometimes at the behest of older family members. One text states:

A young factor in Turkey was sent detailed fatherly advice along with his mother's love, some beer, clothes, and other delicacies. He was instructed to learn Italian bookkeeping, to correct his spelling, to improve his handwriting and to use courteous expressions and capitals for place names: "I would not have you forget that you are an apprentice and a younger brother and that you are sent out to make your fortune and not sett up for the fine gentleman and only take our pleasure." Meanwhile, the young man's principals were asked both to "excuse all his youthful slips" and to "not indulge my son too much but keep him strict to business."³⁶

In turn, young Americans were sometimes sent back to England to train as factors. The same text says:

Fathers employed their eldest and most commonly, their younger sons as their overseas factors. George Sitwell had two sons serving overseas, whom he treated with patient care, as well as several cousins acting for him within the country. Sir Thomas Earle had one son in Bilbao, William Colston one in Marseille and one in Lisbon, George Lane one son and a kinsman in Portugal. The Lowther family had Richard in Holland,

³⁵*Id.* at 41. By 1740, it was noticed that the Dutch and Spanish started changing their purchasing habits and instead of buying directly from the clothier they started buying directly from the Blackwell Hall factors. WESTERFIELD, *supra* note 18, at 303. Factors at Blackwell Hall played other roles also. For example, the land records of Essex County in England include (to paraphrase): a March 27, 1760 Lease & Release, by (i) Edward Leeds, Esq., Alexander Hamilton and Hen. Colive, gents, both of London Blackwell Hall, factors, appointed by Commissioners of Bankruptcy to be assignees of the personal estate of Joseph Chapman, late of George Yard, London, woolen draper, a bankrupt, and (iii) Joseph Lodwick, of N. Shobury, Esq., whereby certain freehold property of the bankrupt Mr. Chapman in N. Shobury and Great Wakering was conveyed by the assignees in consideration of £1,000. Seax-Essex Archives Online, Item D/DS 254/17. See http://seax.essexcc.gov.uk/result_details.asp?DocID=264467.

³⁶RICHARD GRASSBY, KINSHIP AND CAPITALISM: MARRIAGE, FAMILY AND BUSINESS IN THE ENGLISH SPEAKING WORLD, 1580-1740 190 (Cambridge University Press 2001) (citing Letters to son dated 9 Feb., 28 April, and 1, 16 Sep. 1728, Folger Library, MS UB 18).

Christopher in Seville, two sons in Ireland and Germany, and Uncle Robert in London. Gilbert Healthcote remained in London with his sons, William and Gilbert Jr. but Samuel went to Danzig, George died at sea, John and Josiah resided in the West Indies, and Caleb was in New York. Two of the four sons of Sir Henry Les were in the wine trade, like their father. Of Richard Hoare's sons, John was in Genoa, James in Amsterdam, and Richard in Hamburg. William Colston the elder of Bristol had five sons working in Spain. Sons also served as agents in London for provincial merchants, like Thomas Marsden of Blotson.

Siblings also acted as agent for each other. . . . *Charles Barcroft, a London merchant, joined his brother in Virginia in 1636 and then became a factor.* Pay Bayning took his brother, Andrew, apprentice, and made him his agent in Spain. *In the Priestly family several brothers worked together in the textile trade, and John was sent to London as a Blackwell Hall factor. . . .*³⁷

Early colonists in North America likewise employed family members as factors:

In the Atlantic family networks connected England, New England and the West Indies. Many migrated to regions where they had relatives; kinship gave coherence to expatriate communities. Many members of the Newfoundland Company were interrelated. The Pepperells of Piscataqua came from Devon via the Newfoundland fisheries. John Dellbridge of Barnstable employed his nephew as a factor in Bermuda and Richard Dodderidge had a son-in-law in the Guinea trade. Bermuda and Barbados settlers and merchants traded jointly with their kin in England. Richard Hutchinson was in London and his brothers and nephews were in Boston. John Hull traded with his uncle and cousins in England, and Valentine Hill served as a Boston agent for his brother in London. The Codrington family were distributed between England, Barbados and New York. Henry Corbin emigrated to Virginia, while his two brothers stayed in London as merchants. William Ball went to Virginia with his two younger sons, and his eldest stayed in England as an agent. . . .

The same was true of internal [to England] trades, like cutlery, ironmongery, bookselling, or brewing. The clothiers of Manchester were linked by marriage with each other and with London. . . . The Yorkshire cloth dresser and factor, John Lister, and his son sent their wares to a cousin in London. . . .

. . . .

The majority of associates, agents, and regular customers were not, however, kin. Many of the factors employed by Elizabethan merchants were

³⁷*Id.* at 292–93 (footnotes omitted) (emphasis added).

strangers. Only 6.5 percent of merchants registered in the 1633-5 London heraldic Visitation entered relatives in the same branch of trade. Businessmen were exceedingly clannish, but the sheer size of the market made it inevitable that most of their contacts would be friends and acquaintances, not kin. Merchants were obligated to rely on brokers and other intermediaries, selected by referral, to employ outsiders as agents and employees. . . .

[A]mong the twenty-nine clients listed in the ledger of an Aleoppo factor, twelve were sons of Levant merchants, but none were obviously kin. . . . The major transactions of Robert Ashe were with James Ashe, clothier of Westcombe, John Ashe, clothier of Freshford, Edward and Jonathan Ashe, in Paris, and his son James, in London, but he has 129 substantial clients. . . .³⁸

One advantage of employing a family member as factor was, presumably, a higher expectation of loyalty.

As their commercial power grew, English factors became active in politics. For example, the parliamentary history of the sixteen Wilshire boroughs states, in relevant part:

After Wharton's death in 1715 Malmesbury was for a short time under the control of a member of the opposition, Sir John Rushout, who was high steward from 1716 to 1722 and sat for the borough from 1713 to 1722. In 1722 his election was successfully challenged by Giles Earle, of Crudwell, a friend and staunch supporter of Walpole; he and his son William represented Malmesbury together till 1747. In 1747 at least one seat was won in the interest of the Prince of Wales, but in 1754 the two successful candidates were recommended one by Newcastle and one, *Brice Fisher*, by Henry Fox, *apparently as the result of an arrangement whereby Newcastle paid £1,000 to bring about the election of Fox as high steward. Fisher, the son of a Wiltshire clothier and himself a Blackwell-Hall factor, had some interest of his own at Malmesbury, but owed his election to Fox.* For the next twenty years the Fox and Suffolk interests competed for control of the borough, success generally going to the side connected with the government of the day.³⁹

As noted above, early English cloth factors did not limit their operations to Blackwell Hall in London. Business was conducted by the cloth factors, among other places in Leeds, the most important textile center of the day after London. The factors in Leeds included representatives of the London factors and, also, buyers for exportation abroad. As to the latter:

³⁸*Id.* at 294–96.

³⁹See PARLIAMENTARY HISTORY 1689-1832, A HISTORY OF THE COUNTY OF WILTSHIRE: Volume 5 (1957), at 195–230, available at BRITISH HISTORY ONLINE, <http://www.british-history.ac.uk/report.aspx?compid=116093> (last visited March 16, 2010) (footnotes omitted) (emphasis added).

The buyers for exportation abroad were resident commission factors employed by merchant principals who lived in Hamburg and in Holland, and, farther, in the German and Austrian cities Nuremberg, Frankfort, Leipsig [sic], Augsburg and Vienna. It was said by the author of an atlas in 1728 that he could of his own knowledge give the names of particular merchants in Holland, who had sent commissions to Leeds for these goods for above £100,00 value in a year, and that for many successive years. And in the 1760's, £20,000 worth of cloth was often sold in an hour's time, and much of it was shipped abroad at Hull. This is telling evidence of the volume of this commission business.⁴⁰

Certain English corn factors conducted business on the wharf at Bear Quay in London, exposed to the weather until 1750 when they erected the Corn Exchange on nearby Mark Lane. Discussing coastal boatmen of the time, who sailed small sloop-rigged coaster vessels (hoys) used to convey freight and passengers to larger ocean-going ships, one authority on this subject states:

[T]he truth is that the hoymen were factors. As corn factors they accepted commissions from farmers to sell at Bear Key where their status was well established before 1730. The local gentry and tenant-farmers were principals of the hoymen. The factors were employed on the consignment plan, the corn consigned to them being sold at Bear Key for the most favourable price, which in turn depended on the quality of the product and the state of the market. The hoymen-factors of Kent received their consignments at Canterbury or one of the coastal ports, carried the corn to Bear Key, arranged for its unloading on the quay-side, and then sold to the highest bidder. . . . Some factors were known to deal on their own account, as merchants or jobbers, but on the whole they abstained from such dealings since they considered that "the business of a corn factor is perfectly distinct from that of a corn merchant, because a person who receives consignments, and deals at the same time on his own account, may not always be inclined to serve his employers with that impartiality that he otherwise would do."⁴¹

Corn factors also operated world-wide. For example, Thomas Mann, the famous German author, was the son of a prosperous corn factor in Lübeck.

Turning to another industry where factors were active, Peter Matthias describes hop factors:

The factors organised the sale of the crops of many small gardens, making possible an efficient collecting system with efficient bargaining

⁴⁰WESTERFIELD, *supra* note 18, at 305–06 (footnotes omitted).

⁴¹Dennis Baker, *The Marketing of Corn in the First Half of the Eighteenth Century: North East Kent*, 18 AGRICULTURAL HISTORY REV. No. 2, at 137–39 (1970) (citing Reports from the Committees of the House of Commons, 1774-1802, IX, at 144).

power for the many producers. At the end of the century, factors did their agency work (that is, apart from the speculation of merchanting they generally undertook as principals, owning hops themselves) for a traditional commission of 3s. per bag, when prices were moderate, rising to 4s. a little later in the case of higher prices. This freed the planter from responsibility and expense, once the hops reached the Borough, for his factor usually controlled storage and negotiated insurance, sale, delivery, and remittance. The large network of purchasing and commissioning from planters is illustrated by every fire in a Borough warehouse which led merchants and factors to claim rebates from the planters on duty paid—and the size of their dealings becomes clear. In 1756, for example, Ambler, Downs & Chappell lost in a fire a stock of over 400 cwt. bought through twelve factors, and many more than a score of planters scattered all over East and West Kent and Sussex. At a similar disaster, in 1772, Timothy Yeates (one of the most prominent hop-merchants operating in Southwark) lost a store of over 1000 cwt., valued at over £5,000, and in 1815 the Hand in Fire Office became liable for £15,500 when the stock of John and George Evans, factors, was destroyed.

The numbers recorded in trade directories, because of the large-scale dealings of a few individuals, do not reflect the true state of the market, for the many small people in a very small way of trade are entered in them on the same terms as the greatest, which can give a misleading picture of the whole. In 1814, for example, there are more than fifty-eight persons listed as dealers, merchants or factors in hops in the Post Office directory, no great change in numbers from the record of Kent's directory in 1780. Almost all of them dealt in seeds, corn or some allied commodities, in addition to hops, and most are to be found in the Borough. One or two important names—such as Bolland of Mark Lane, Wood, Wigan & Co. of Canon Street—are to the north of the river, and in 1814 one firm dealing in 'Timber, hops, corn and seeds' was to be found by the Paddington Canal, but the market operations of all of them—the actual dealing—was centered firmly south of the Thames, as it always had been, and to which the Hop Exchange building was to bear permanent testimony. The directories at the end of the eighteenth century cannot indicate that less than a dozen firms had a pre-eminent proportion of the total trade passing through their books.

....

Without a study of their business records, of which Thackrah's ledger is but one example, it is impossible to do full justice to the story of the evolution of the group of important Southwark hop merchants and factors during the eighteenth century. In the absence of these documents, it is the peripheral evidence from the books of brewers (and the Admiralty Victualing Commission) which reveals the influence over the regional sales of hops throughout the country. These customers' accounts suggest

transactions on a scale rivaling that of the greatest houses in internal trade and of some houses close to the greatest in foreign trade.

The nomenclature of factor or merchant meant, at most, an indication of the degree of each type of transaction conducted. All factors (between the growers and the market, as between the brewers and the market) seem to have bought and sold themselves, besides selling the planters' consignments or buying the brewer's supplies of a commodity which they never owned, on a flat-rate commission. In a speculative market as this, the identification (or isolation) of function implied in the differing words of "merchant" and "factor" is nowhere more misleading when applied to the men concerned in it. In times of rapid expansion from small beginnings "factoring" would naturally result from the large number of consignments needed to be organized for sale and distribution. As wealth accumulated in the hands of these factors, and the market evolved, subject to other pressures, these agents were induced to invest in hops on their own. . . .

. . . .

Both [brewers and factors] tended to claim, such being the mutual structures of industry and trade, each had become the sacrificial victim to the monopoly power of the other—a good indication that each group had come to depend inescapably on the other—but that both sides feared that dependence. In short, oligopoly was facing oligopoly. Chafing under the market situation, the large manufacturer or the large seller of a raw material was in reality regretting the influence which each had in developing a commercial structure for supplying most adequately the needs of the other. By 1857, a witness to the committee investigating the hop trade noted how tight was the ring of factors and merchants in the Borough, as the committee on the malt trade before 1830 had stressed the power of the malt-factors and the high proportion of malt which did not pass through the market at all. . . .

. . . .

Much stress has been laid upon the need to pay large sums in duty as a simple major reason to explain the need of the planter to accept credit from his factor and merchant. The other impression gained from public comment is also that such credit bonds were the main strength of the position of market intermediaries over brewers. Emphasis therefore needs to be laid upon the high premium given in such a large-scale, national, uncertain market, to that particular blend of knowledge, experience, skill and instinct which makes up commercial expertise. This was the prime basis of the position of factors, upon which specialized knowledge and advice [such as which growers sold the right quality and type of hops for a particular brewing need] so essential to the customers they served, accreted the

adjuncts of convenience and influence. Undoubtedly the provision of credit was the most important of these to the brewer, but with it, too, came the other functions of the merchant. As both planter and brewer were found to depend substantially upon the experience and credit possessed by these various kinds of intermediary, all important schemes for planters to sell direct [to the brewers] had broken down, although Bass at Burton seemed to have developed some contact with [the growers.] Most of the East Kent dealings were in ready cash at the time of the harvest—with planters of greater financial independence than elsewhere—and factors whose customers came from these favoured areas could give very different reports on the extent of advances [by the factors to the planters]. W. Harryman had only one tenth of his 724 customers with advances in 1857 and thought that bankers proposing to lend to any of the others would have checked with him first—as none had. The general impression, then, as before 1830, was that this proportion would very much underestimate the general degree of such forward transactions. It did show, however, that extension of credit came as much in good times as in bad—as much, that is, for helping with the overhead costs of extending plantations in boom years as in covering running costs in a depression.⁴²

Among the best sources of the scope and growth of factoring in England over time come from insurance records of the period. One text states that by 1820 the capital insured by English corn factors and English hop factors eclipsed the capital insured by the Blackwell Hall factors, whereas, 50 years before that had not been the case:⁴³

Insured Capital:	1770s (£)	1820s (£)
Corn factors	3,406	12,916
Hop factors	1,694	9,100
Blackwell Hall factors	3,979	5,813

The same text also states: “The fire office registers also contain policies taken out by factors and brokers of such diverse commodities as beer, wine and spirits, tea, fish, flour, fruit, bacon, cheese, skins, drugs, boots and shoes, looms, tallow, ironmongery and leather. In the 1770s Layton and Samdell, tea brokers at 41 Lime Street, insured for £10,000, and Edward Walker, a drug broker at 12 Billiter Square, for £3300. In the 1820s John King, a leather broker in Philpot Lane, insured for £15,500 and George Millward, a bacon broker at 120 Goswell Street, for £5000.”⁴⁴

⁴²PETER MATHIAS, *THE BREWING INDUSTRY IN ENGLAND, 1700-1830* (Cambridge University Press 1959) at 508–09, 515, 516–20 (footnotes omitted).

⁴³DAVID BARNETT, *LONDON, HUB OF THE INDUSTRIAL REVOLUTION: A REVISIONARY HISTORY, 1775-1825* Table 8.3 at 206 (Tauris Academic Studies, an imprint of I.B. Tauris & Co., Ltd. 1998). The author notes, at 205, that the London and *Provincial New Commercial Directory for 1826-1827* (Pigot & Co. 1827) listed 1,254 factors, agents and brokers, acting as middlemen between merchants, on the one hand, and wholesalers, on the other.

⁴⁴*Id.* at 207.

As world commerce of the period developed, the term “commission merchant” arose in English commercial parlance to describe well capitalized factors who also provided financing to their clients via advances against consigned goods held by the factor:

Commission House. The line of demarcation between factor and commission house cannot be absolutely drawn, because a commission merchant is a factor. A commission house buys and sells in foreign trade, in its own name, for a number of principals a variety of goods, on commission. It receives the goods by consignment from a merchant or manufacturer. It is entrusted with the possessions, control, management and disposal of the goods sold. It does business in its name but on the account and at the risk of the principal.

These houses are houses of reputation, capital and credit. They allow the consignor to draw on them for a large per cent of the value of the goods consigned, immediately upon receipt. Such advances require large capital on the part of the consignee. They store the goods, sell them in their own name, and guarantee payments of the accounts to the consignor. They carry out the shipping details, caring for lading, shipping, insurance, commercial papers, etc. They also buy goods upon order from foreign houses, and finance and ship the order, collecting their outlay from the consignee. Their profits arise from the commission paid, interest on their outlay, insurance, profits, etc.

The advantages that are realized by a foreign firm in buying through a commission house are first, that all orders may be forwarded and all payments made to one person instead of dealing with various firms; and that likewise all shipments are received on one bill of lading; and secondly that larger credit is likely to be got from a commission house, it being acquainted with the general condition of trade and having wider banking connections. Ricard declared it to be “le plus avantageux de toutes les branches de commerce.” It is equally advantageous for the producer to dispose of his goods through the commission house, for the house carries out the details of shipping and procures lower freight rates on the large bulk of shipments that can be had on the small quantities the manufacturer would have to ship; and further the commission house is a home firm whose financial strength is easily investigated, against which suits for the recovery of debts are made according to home laws, whereas if dealing was done directly by the producer, collections would be made abroad.

The obvious disadvantages engendered in the dealing through the commission house are that the house handles a variety of goods and is not specialist in any, and that the house usually wants an exclusive agency for the principal and the granting of this monopoly may result in limiting the market for the principal’s goods.⁴⁵

⁴⁵WESTERFIELD, *supra* note 18, at 359–60 (footnotes omitted).

Factors, of course, at least before 1890, were mercantile agents entrusted with the physical possession of their principal's goods or documents of title to the goods, for purposes of sale, and who sold on commission. In contrast, a broker may have performed similar functions, but said broker did not physically possess either goods or documents of title to the goods.⁴⁶ If goods were sold for the agent's own account, then the agent was not a factor at common law:

The word "factor" is not a term of the Civil Law; it is not to be found in the language in which that system of laws is written. I believe it has a French origin in the word "facteur" and, in common parlance, it continues in a sense of great latitude to signify any agent whatsoever. In the northern district of this island, it is very generally applied to land-stewards, bailiffs and managers of estates. . . . In seaport towns, where there are great manufactories, besides the great manufacturers themselves, there may be factors to export upon commission; a very great part of the commerce of this great town is conducted on foreign goods imported, and our own manufactures to be exported. But I take the real and established distinction in our statutes to be that a merchant buys and sells for his own direct mercantile profit, and the factor only buys and sells upon commission. . . . To be a factor, he must be empowered to sell by commission; and if he is not so empowered, he is not a factor, whatever else he may do.⁴⁷

The practice of factoring from the fourteenth through the early eighteenth centuries was not limited to domestic and foreign factors who operated in London and in other parts of England;⁴⁸ rather, factors were found in all the major European nations and in their related colonial dominions. Merchants customarily acted as factors for one another and factoring was common in both commercial parlance and in commercial trade:

Increasingly during the period under study did the merchants of Europe act mutually as factors for each other, until by 1774 it was asserted

⁴⁶PETER M. BISCOE, *THE LAW AND PRACTICE OF CREDIT FACTORING* 5 (Butterworths 1975).

⁴⁷*Id.* (citing comments of Lord Stowell in a case titled *The Matchless*, 1 Hag. Adm. 97,101 (1822)). At the time his book was authored, Peter Biscoe was a Barrister and Solicitor of the Supreme Court of Tasmania, and a Solicitor of the Supreme Court of New South Wales, Australia, working for the international factoring department of Bankers Trust in New York City. He is now a Justice of the Land and Environmental Court in Sydney. Justice Biscoe noted that there was a less obvious Latin root in the verb "facere," meaning "to do" (hence, a factor as one who does things for another), which preceded the French origin, unknown to Lord Stowell. *Id.* See also introductory text, Main Volume, at 5 n.3.

⁴⁸In the early part of the 18th century, one writer noted that there were a great number of London merchants " 'who were solely maintained by Foreigners in Holland, France and other Nations by Factorage' at 2½%." See WESTERFIELD, *supra* note 18, at 360 n.2 (stating as his source for this conclusion, " 'Letter to Maxwell on the Bank,' 11); it was the opinion of the writer of the 'British Merchant,' XXXVI-XXXVII, that the merchants of England, more than of other nations, did business on their own capital and less as factors."'). Westerfield's index of sources, at 435, shows only that the letter was written in Dublin in 1721 by an unknown author, with no further identifying details.

to be “the universal custom of Merchants of the highest credit, throughout Europe.” . . .

Thus, during the [eighteenth] century the foreign connections were developed and extended. The merchants began to differentiate, some serving themselves only, others acted as factors and merchants and still others pursued the pure commission house business. The increase of communication and mutual understanding among the merchants, the specialization of commission merchants, and the very variety of merchants all tended to a larger commerce.

A difference in the method of doing the American business developed along this line, during the century, between London and the outports. The generality of the London merchants became consignees of the American planters and sold their produce on commission; with the proceeds they bought East India goods and English manufactures on commission and shipped them as return cargo. In other words, the Londoner became a pure commission house. But in the ports the merchants continued to carry on their commerce with America on their own accounts, and employed factors in the colonies to buy their produce and sell their consignments of East India goods and English wares.⁴⁹

Factoring seems to have largely died out as a form of commercial financing in Europe during the early 1900s, with isolated exceptions.⁵⁰ Melvyn Westlake summarizes the situation as follows:

During the 17th and 18th centuries the Netherlands was financing a large part of the world’s commerce and production, and the Dutch came to be described by Montesquieu and Voltaire as the “factors of the whole world.” Historical records show that in France and Germany during the 1800s advances were being made directly against “receivables” (the outstanding debts on goods delivered). This was also practiced in Austria during the 1890s. In Vienna, advances against receivables seem to have been commonplace up until the First World War.

In Germany, the procedure of making advances against receivables was stopped by a decree issued by the Reichsbank in 1911. This had repercussions in other countries, and in Sweden the Bankers Association decided not to include advances against receivables among the services offered by member banks. Operational problems of ledger accounting and collection contributed to this decision. Meanwhile, factoring in the form it had this [sic] developed, became a backwater in Europe. The great merchant

⁴⁹*Id.* at 360–61 (footnotes omitted).

⁵⁰At least one American factor operated in the United Kingdom during the 1930s. *See* James Talcott, *Ltd. v. John Lewis & Co.*, [1940] 3 All E.R. 592 (A.C.).

and trading houses had moved to the centre of the stage by the peak of the colonial era.

However, their operations were not unakin to these of the factor that preceded them. It is no coincidence that many of the confirming houses in recent years played a major part in the reintroduction of factoring into Britain. But until this development, the term factoring had come to be associated, since before the First World War, with a kind of wholesaler, particularly in the electrical, metal hardware and motor-car fields. By contrast, in the United States between the wars, factoring, which had been taken across the Atlantic by the early settlers, was receiving a new lease on life.⁵¹

Factoring, on any large scale, was not reintroduced to England, from America, until 1960, as discussed below.

IV. EVOLUTION OF MODERN AMERICAN FACTORING LAW

A. *Birth of the Modern American Factor*

2. *American Factors of the Early 1800s Were Largely European Immigrants*

The Supreme Court's 1840 decision in *James Brown & Co. v. M'gran*, discussed in the Main Volume,⁵² resolved a controversy which arose that involved cotton factoring, a practice prevalent in the southern United States. In that case, Georgia cotton was shipped from Mobile, Alabama to Liverpool, England for sale. The lengthy period between the time that cotton was picked in the field and its ultimate sale overseas made the advances extended by the cotton factors a key cog in the financial viability of the American planters.

Vestiges of the era of the cotton factors can be found today in port cities of the American South. In Savannah, Georgia, "Factor's Walk" is now a riverfront mix of retail shops, a museum, bars, restaurants, and a hotel. However, at the time it was built, in 1817, it was the site of the Cotton Exchange. The first two floors of the building were used to store, grade, and export cotton brought into the port for transport to Europe. In 1853, three more floors were added, with the third floor used for storage and the fourth and fifth floors for offices. Elevated iron walkways and bridges from Bay Street to the multistory Cotton Exchange connected the structure to the riverfront bluff. The cotton factors walked between and above the cotton which was stored for shipment on the lower floors of the Exchange; the alleys and walkways came to be known as "Factor's Walk."⁵³

⁵¹See WESTLAKE, *supra* note 4, at 43.

⁵²39 U.S. 479, 14 Pet. 479, 10 L. Ed. 550, 1840 WL 4612 (1840). See Section IV.A.2, Main Volume, at 51–53.

⁵³Cobblestones on River Street, at the base of the building, were brought to Savannah as ship's ballast. Once the ships were unloaded of excess ballast and merchandise which was imported for sale in America, the cotton bales were loaded and the ships sailed down the Savannah River and out to sea, often destined for Europe or the Northern United States.

In Charleston, South Carolina, a high-end townhouse and condominium complex at 5 Middle Atlantic Wharf is also called Factor's Walk. Nearby is the Carolina Yacht Club, founded in 1883, which building, built around 1830, was originally used as a factor's wharf. Cotton was brought by river to the Charleston harbor for grading by English and Northern buyers.⁵⁴

13. *Continued Evolution of the Factoring Industry From the 1960s Through the 1980s; Entry of the Money-Center Banks; a New Wave of Consolidations and Emergence of a Two-Tiered Industry Dominated, in Volume, by an Ever Smaller Number of Major Factors; and the Beginning of the International Market*

a. *Export of Modern Factoring From America Back to England and to the Continent in the 1960s [New Topic]*

Modern factoring, American style, was exported back into England in November 1960, when Charles Harding, president of Meinhard & Co., a leading old-line factor owned by CIT, flew to England to establish a factoring subsidiary, aided by U.K. backers, in the City of London known as the Alexandria Finance Company.⁵⁵ Two months later, First National Bank of Boston, joined by London merchant bank M. Samuel & Co. and by Tozer, Kemsley & Millbourn, a firm which had previously conducted factoring type business elsewhere in the Commonwealth, set up International Factors, Ltd.⁵⁶ These developments piqued the interest of several British banking and financial institutions. Because the era of British colonialism was winding down, English financiers wanted to diversify their revenue base. Melvyn Westlake states:

Led by National Provincial in 1968, the big banks started to become participants in the industry. Within two years this trend was followed by the London based subsidiaries of the large U.S. banks. Many of these London subsidiaries were established to exploit the blossoming Eurodollar market which was centered on the City [of London]. But as the Eurodollar market alone was not enough to sustain all of these subsidiaries, some of the more

⁵⁴Local literature describes the rooms where the cotton was graded as being painted a dark royal blue so that when the factors viewed the cotton it would show to the best effect.

⁵⁵WESTLAKE, *supra* note 4, at 81. *See also* BISCOE, *supra* note 46, at 5–6: “Until 1960 credit factoring did not exist outside North America. In the United States, the prevailing view until 1960 was that assumption of the credit risk by the factor and notice of assignment to customers were both essential elements. However, credit factoring with recourse to the client existed in Canada since 1951, and in England and other countries since the early 1960s. Further, in America itself, confidential non-recourse factoring has been practiced since the early 1960s. In this facility, notice of assignment is not given to customers and the factor’s function is limited to credit advice and assumption of the credit risk. This facility must not be confused with the species of receivables (i.e., trade debt) financing commonly called ‘invoice discounting’, which, in recent years, has often, wrongfully, been called ‘confidential factoring’.” (Footnotes omitted.)

⁵⁶WESTLAKE, *supra* note 4, at 82.

adventurous began developing sterling operations and expanded into domestic British financing—leasing, factoring and merchant banking.⁵⁷

In these early years of the reintroduction of factoring into England, most of the English factors purchased accounts without recourse, consistent with the still prevailing American business model. Peter Biscoe reports:

Factoring was introduced into Canada during the 1930s. The first factoring company outside North America was founded in England in 1960. The number of established factors in England grew to twelve in 1972, then shrank, through take-overs and mergers, to nine by early 1974. Of these seven are essentially old-line (non-recourse) factors and two recourse factors. All are located in or fairly near London. During the same period invoice discounting has also grown considerably and is carried on by firms specializing in that activity as well as by some of the factors as an alternative to factoring.

Very soon after its introduction, factoring was established in Germany, and soon spread throughout Western Europe. . . .⁵⁸

One of the reasons that early British factoring in the 1960s and early 1970s was conducted on a nonrecourse (old-line) basis was the concern of the factors that the purchase of accounts with recourse could cause them to run afoul of the Moneylenders Acts 1900–1927, which ceased to have effect upon adoption of the Consumer Credit Act 1974. Peter Biscoe, writing in 1975, explained:

Ever since the introduction of factoring to England, factors' legal concepts and methods of operation have been carefully molded so as to reflect factoring as the purchase of assets (i.e., book debts) and to avoid any suggestion that factoring was really lending against the security of book debts and therefore within the scope of the Acts. This often resulted in the employment of some strained concepts in documentation and the use of cumbersome accounting and operational methods, particularly in recourse factoring.

. . . .

The original purpose of the Moneylenders Acts 1900–1927 was the protection of private borrowers. Unfortunately, in their terms the Acts are

⁵⁷*Id.* Westlake lists nine major U.K. factors in 1975: Abruthnot Factors; Barclay's Bank factoring division; BankAmerica-Williams Glyn Factors; Credit Factoring International (formed to replace the business of Portland Group Factors, founded in 1963; H&H Factors (bought by Allied Factors in 1972); International Factors; Alex Lawrie Factors (which took over Bankers Trust UK factoring arm in 1973); Mercantile Credit factoring subdivision; and Griffin Factors (which absorbed the business of Midland-Citibank Factors in 1973). *Id.* at 83.

⁵⁸BISCOE, *supra* note 46, at 37.

equally as applicable to commercial lending as to the business of consumer lending. They apply regardless of the size of the loan.

The Acts contain no definition of a loan. Factors rely on a decision that the purchase of debts at a lump sum discount is not moneylending [sic] even where the arrangement is with recourse to the assignor and there is no notification to the debtor. However, there is uneasiness among factors because that decision was only at first instance, and although it had been approved obiter by the Judicial Committee of the Privy Council, some doubt had been raised as to its strength. . . .

. . . .

The Crowther Commission stated, it is submitted rightly, that the distinction between the purchase of receivables and a loan on the security of receivables is particularly fine when the assignor gives recourse for his obligations. It is then barely distinguishable from a direct obligation to repay the sum to be received with interest. The Committee might well have added that the main purpose of receivables financiers and recourse factors constructing their agreements as a sale of receivables rather than as a charge or mortgage of receivables was to avoid the Moneylenders Acts 1900–1927, which will soon be repealed. Subsidiary reasons were the avoidance of registration of a charge or mortgage under the Companies Act 1948; and, arguably, the better prima facie effect on a client's balance sheet of a sale of receivables compared with a charge or mortgage.⁵⁹

After repeal of the Moneylenders Acts of 1900–1927, British factoring changed from being operated principally on an old-line, nonrecourse basis (still the prevailing U.S. business model) to, in large part, the purchase of accounts on a full recourse basis.

In 1985, the privately-held Bibby Line Group, Ltd., founded in 1807 by John Bibby as a shipping company headquartered in Liverpool, began to factor accounts through its Bibby Financial Services division.⁶⁰ Bibby, a service conglomerate with interests in shipping, marine services, oilfield services, contract logistics, financial services, and retail, is presently the largest independent provider of factoring and invoice discounting in the United Kingdom.⁶¹

⁵⁹*Id.* at 153–54 (citing *Olds Discount Company v. John Playfair, Ltd.*, (1938) 3 All E.R. 275 (K.B.), as well as the decision of the Judicial Committee of the Privy Council in *Chow Young Hong v. Choong Fab Rubber Manufactory*, [1962] A.C. 209 (Appeal taken from the Supreme Court of the Federation of Malaysia) (1961) 3 All E.R. 1163)). The author's reference to the "Crowther Committee" is to the Report of the Committee on Consumer Credit, March, 1971, Cmnd. 4596. *Id.* at 153 n.1.

⁶⁰Bibby purchased Slough Factors in 1985, whose president, David Robertson, is still running Bibby's factoring business today. Correspondence between Bibby USA and the authors, June 17, 2010.

⁶¹*See* <http://www.bibbyfinancialservices.com> (last visited June 17, 2010).

Today, while accounts purchased on a full recourse basis constitute most British factoring volume,⁶² nonrecourse facilities continue to be offered by several U.K. factors, including Bibby.⁶³

Peter Biscoe describes the nature of recourse factoring in England in his 1975 treatise:

Recourse factoring is a hybrid between old-line factoring and invoice discounting. Which one it bears a closer resemblance to is a moot point. Recourse factoring resembles old-line factoring in that, with the exception of assumption of credit risk, it has the same functions. However, its non-financial functions—credit control (including collections) and sales ledger administration—distinguish it from invoice discounting as it has traditionally been conducted, that is, as a purely financial facility without any non-financial element. On the other hand, the fact that credit risk remains with the client makes recourse factoring comparable with invoice discounting. If the view is taken, as it generally is in America, that the cardinal ingredient of “factoring” is assumption of the credit risk by the factor, the inevitable conclusion is that “recourse factoring” is a misnomer and that it should be classified as “invoice discounting with services”, or the like. Recourse factoring does not exist in the United States; there only old-line factoring and invoice discounting (or “receivables financing” as they call it) are practiced. It is entrenched in Canada and in a number of European countries and the general view outside America is to accept it as a species of factoring. One sympathises with the purist’s objection to the classification of recourse factoring as factoring, but there comes a time when it is impractical to try and turn back the clock and expunge words from the (non-American) vocabulary. Consequently, in this book, recourse factoring is accepted, with some misgivings, as a species of factoring. Provided it is clearly understood that recourse factoring differs in a crucial respect from old-line factoring in that it does not pass credit risk to the factor, no confusion should arise and those encountering the word “factoring” being used without qualification

⁶²Statistics published by the Asset Based Financing Association in Britain show that for the year ending December 2009, only 10.5% of UK factoring was on a nonrecourse basis (£20,073 out of £191,329 total volume (£M)). See <http://www.abfa.org.uk/members.statistics.asp>, then access the PDF file for quarter 4 2009.

⁶³The U.K. factors who currently offer nonrecourse facilities include, among others: Barclays Asset & Sales Finance, Bibby Financial Services, Close Invoice Finance, HSBC Invoice Finance (UK), Ltd., Lloyd’s TSB Commercial Finance, and Venture Finance Group (as per June 17, 2010 correspondence between Bibby USA and the authors as to Bibby; and as per a recent exchange in the Factoring Professionals Group on LinkedIn, found at <http://www.linkedin.com/groupAnswers?viewQuestionsAndAnswers=&discussionID=1525> (last visited June 16, 2010), courtesy of John Fedewa, moderator of the LinkedIn Factoring Professionals site). In contrast to England, in several other European countries—Italy, for example—nonrecourse factoring is still more prevalent. Leora Klapper, *The Role of Reverse Factoring in Supplier Financing of Small and Medium Sized Enterprises* (World Bank), at 9, available at http://Siteresources.worldbank.org/DEC/Resources/SupplierFinancing_Klapper.pdf (“69% of all factoring in Italy is done on a non-recourse basis”) (citing Muschella 2003).

will be careful to ascertain precisely whether it refers to the old-line or recourse species.⁶⁴

Biscoe goes on to distinguish full recourse factoring from “invoice discounting” in England, as follows:

Factoring should be carefully distinguished from invoice discounting, which is purely a financial facility without the non-financial elements of factoring. Regrettably, the distinction is blurred and confusion caused by the practice, in some quarters, of calling invoice discounting “confidential factoring” which, as stated earlier, is the form of non-recourse factoring which bears no relation to invoice discounting apart from the common element of non-disclosure of assignment to customers. In invoice discounting, the financier takes an assignment of debts with recourse to the client, and pays the client an advance purchase payment up to about 80 per cent. of the value thereof, normally with a credit limit of a specified amount. The common expression “invoice discounting” is actually a misnomer in that an invoice is only a piece of paper evidencing a debt. The activity should, more logically, be called receivables discounting or debt discounting. Many factors also offer invoice discounting.

In form, an invoice discounting agreement resembles a factoring agreement in that the financier purchases the debts and the client makes much the same warranties concerning their validity and enforceability. However, the similarity goes little further. The main differences are: (a) the purchase is always with recourse to the client; (b) notice of assignment is not given to customers, although the financier reserves the right to give notice if he feels his security is imperiled; (c) the client collects the debts as the financier’s agent and remits collections *in specie* to the financier; (d) the client usually has a discretion as to the frequency of assignments, unlike factoring, where the client is normally obligated to assign all debts—consequently, the discounting client can use the facility whenever he chooses, turning it on and off like a tap; (e) the financier provides no non-financial services to the client whatsoever—the arrangement is purely financial.⁶⁵

⁶⁴BISCOE, *supra* note 46, at 6–7.

⁶⁵*Id.* at 24–25.