

TIMBER TRADE ORGANIZATIONS IN SHANGHAI: INSTITUTIONS, ENFORCEMENT, AND DISPUTE RESOLUTION, 1880–1930

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This study focuses on the mechanisms of contract enforcement and dispute resolution in the trade of timber in Shanghai from the 1880s to the 1930s. It shows that merchant guilds, chambers of commerce, and the court system constituted complementary institutions of contract enforcement. Timber trade guilds relied on reputation mechanisms and information sharing to maintain intra-group solidarity and monitor outside trading partners. Horizontal communications among timber guilds in different localities further enhanced their capability to respond promptly to cross-regional cases. When disputes escalated beyond the scope of a single merchant guild, chambers of commerce (after 1904) and the court system became involved. Vertical communications among these organizations strengthened the continuity from informal norms of business practices to guild regulations, and thence to adjudications in court. Whereas the typical story, drawn from European history, was one of transition toward more formal institutions, this case study shows that formal and informal institutions could complement each other and that they existed along a continuum rather than in separated spheres. The convergence of the expected outcomes as a result of resorting to different platforms of dispute resolution reinforced the consistency and credibility of the cost of defaulting.

Keywords: contract enforcement; formal and informal institutions; merchant guilds; chamber of commerce; mixed courts; timber; Shanghai

INTRODUCTION

In 1932, the Kaitai 開泰 Timber Store in Shanghai tried to recover 1,400 silver taels owed by the Yong Xing Shun 永興順 Timber Store in Wuxi for the 700 timber logs it had

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purchased on credit from Kaitai two months previously. After going through all the available venues of dispute resolution, including the timber trade guilds, chambers of commerce, and the local courts, Kaitai still ended up with nothing.

This article centers on the risks of default and information asymmetry that providers of trade credit like Kaitai had to face. The key issue is to understand the array of institutional solutions that were available to the merchant communities to combat such risks. For a credit-based trade to be sustainable, the unfortunate outcome for Kaitai had to be infrequent. If there were too many cases like that of Kaitai, the trade of timber would have had to fall back on cash transactions, which would be far less efficient than credit. In reality, that did not happen. Spot transactions were unusual in the timber trade; instead, credit was widely used. Short-term trade credit in the form of chains of deferred payment was essential for the development of timber wholesale. This was not only because of the high monetary value of typical transactions (usually several thousand silver *yuan*), but also due to the length of time required for transporting timber and finishing a construction project. The grace period extended to construction contractors in particular was critical for Shanghai's construction boom during this period. The system of contract enforcement constituted by the formal and informal institutions within the city and cross-regionally must have been fairly effective in checking excessive defaults in payment and ensuring the smooth flow of goods and credit along the long supply chain.

This article examines the different mechanisms of contract enforcement at work in the Shanghai timber trade from the 1880s to the 1930s. It combines evidence from timber trade guilds,¹ the network of chambers of commerce that covered Shanghai and its trading collaborators in other cities, the domestic court system, as well as the colonial institution of Mixed Courts. Previous literature has produced detailed studies on the institutional histories and multifaceted functions of each of these organizations.² This article, by contrast, sheds more light on inter-organizational coordination from the vantage point of contract enforcement, and evaluates the overall effectiveness of their complementarity. Before the concluding section, we will revisit the case of Kaitai vs. Yong Xing Shun in detail to understand the potential and limitations of this system when it was operating at full capacity.

The findings in the article confirm two important observations made in previous literature on commercial disputes and their resolutions in late imperial China. First, the

1 In this article, I use the term “guild” in its generic meaning of commercial organizations. I want to dissociate my usage from earlier scholarship that explicitly or implicitly compares Chinese commercial organizations with medieval European guilds with an agenda of determining China's stage of development. Some representative works of this line of inquiry include Morse 1909; Peng 1988; Liu and He 1983. This paradigm has been challenged by studies that call into question the transferability of the term “guild” as well as studies that revealed the highly competitive market conditions in late imperial China; see Ch'iu 1990. More fundamentally, new theoretical approaches to studying historical guild-like organizations in world history have challenged the implicit assumption that guilds were attached to a particular stage of development in a unilinear model of historical progression. The new research trend is well represented in an edited volume, Lucassen et al. 2008, which attempts to combine studies on the functioning of guilds and guild-like institutions from the West to the East within a comparative framework.

2 This study has benefited from monographs devoted to the study of each of these institutions, particularly Ma and Fu 2015 on the chambers of commerce; Kotenev 1925, Stephens 1992, and Yang 2006 on the mixed courts; Negishi 1951 and Zhang 2011 for merchant guilds in Shanghai.

traditional justice system was willing to uphold contractual agreements.³ Its proceedings in commercial matters were not adjudication based on a formal code but more akin to a mediation process that required the mutual consent of the litigants to settle a case.⁴ Second, merchant organizations played an important role in informing the court of local business customs and mediating commercial disputes outside the courtroom, sometimes at the request of the magistrates.⁵ The archival materials of the timber trade guilds used in this study show that many default cases were resolved by the guilds and never needed to go to court. Applying the framework of institutional economics, I find that at the center of the guilds' enforcement capacity were reputation mechanisms based on information sharing and collective punishment strategies.

In addition, I will highlight two more points. By cross-examining court records and guild archives that provide a close-up account of the everyday operations of merchant organizations, I provide a fuller appreciation of the interconnectedness of the formal court system and the merchant organizations and how order was brought about by their cooperation. Moreover, while earlier works typically take the end of the Qing dynasty as either the starting or the ending point of study, this article's coverage of the half century from the 1880s to the 1930s traces the dynamic merging process of Chinese practices and Western legal concepts. Instead of one-way influence of Western jurisprudence on the traditional Chinese system, it was their mutual adaptation that pushed forward the transformation of commercial adjudication in modern China.

The trade of timber was representative of an important sector in the commercial world of late imperial and modern China. That is, long-distance, capital-intensive bulk trades that were largely free from the state's interference, unlike the trade of salt or grain. The understanding drawn from the timber trade is significant in the institutional analysis of credit issues in Chinese long-distance trade in general. It also brings this article in direct conversation with the debate in economic history on the effectiveness of formal and informal contract enforcement mechanisms in sustaining long-distance trade. Economic theorists argue that contracts must be sustained by incentive-compatible institutional arrangements.⁶ Some studies, represented by the work of Douglass North, emphasize the role of the state in providing these institutional arrangements: a formal legal framework and a court system.⁷ Other scholarship has made equally strong arguments that various informal, private-order mechanisms have provided effective means to solve enforcement problems.⁸

The findings of this study support a third approach, which argues that although specific institutions play specific roles, there was no single set of institutions of trade that applied universally. Instead, the effective combination of various formal and informal institutions

3 Zelin et al. 2004.

4 On the intermediation nature of the traditional legal system on civil matters, see Shiga 1998.

5 Fan et al. 2007; Ch'iu 2009; Dykstra 2014.

6 Williamson 1993.

7 Representative works include North 1990; North et al. 2009.

8 See Greif 2006. More recent works that show the importance of networks and reputation mechanisms include Goldberg 2012; Aslanian 2011; Lydon 2009.

corresponds to the nature of the trade and the larger political, social, and cultural conditions.⁹ My argument for institutional complementarity, it should be stressed, does not deny the distinctiveness between the proceedings of formal adjudication and informal mediation, but rather emphasizes channels of communication and collaboration, which contributed to the convergence of the expected outcomes from different platforms of resolution, thus limiting the room for legal speculation.¹⁰

THE TIMBER MARKET IN SHANGHAI AND SOURCES OF MATERIALS

There were two timber trade guilds in Shanghai. The South City Association of Timber Merchants was the organization of traders of domestic timber produced in Fujian. The Zhenxun Association represented firms that imported timber from North America, Southeast Asia, and other overseas regions. This section introduces the development of the market for domestic and imported timber in Shanghai, the brief history of the two guilds, and the available sources used for this study.

Shanghai started to develop into a regional distributing center for domestic timber in the 1860s. Before then, Fujian timber was usually shipped by sea to Ningbo or to the port of Zhapu in Hangzhou Bay and then distributed by river across Zhejiang.¹¹ In the 1860s, when the Taiping Rebellion interrupted this traditional route, timber merchants originally based in Zhapu relocated to Shanghai, attracted by its treaty-port security. These merchants clustered in the market south of the old city walls and became known as the “south city timber merchants” (*nanshi mushang* 南市木商). Thus, Shanghai became the distribution center of Fujian timber for Zhejiang and Jiangsu provinces.¹² Buoyed by the burgeoning timber demand in Shanghai, Fujian timber sales grew rapidly from the 1870s to the 1910s and reached their heyday in the 1920s.¹³ The organization of the domestic timber trade, known as the South City Association of Timber Merchants (*Nanshi Mushang Gongsuo* 南市木商公所, hereafter SCATM), was established in 1875.¹⁴ SCATM was essentially an

9 Jean-Laurent Rosenthal and R. Bin Wong have put forward a theoretical hypothesis for comparative studies on the feasibility and desirability of formal vs. informal contracting, see Rosenthal and Wong 2011, pp. 67–98. Monographic studies that have taken up similar views include Goldberg 2012; Gelderblom 2013.

10 This view is similar to that of Shiga Shüzō, who has argued that court adjudication and private mediations, although distinct in terms of procedures and formalities, worked as a coordinated system; see Shiga 1996. On a related note, Liang Zhiping also acknowledges the functional cooperation between state law and customary law. Meanwhile, he stresses the rupture between the two knowledge systems at the level of jurisprudence, which is less relevant to the current discussion on practical implementation. See Liang 1996, pp. 127–40. Moreover, there is no consensus among legal historians as to whether local customs could be said to have constituted customary/civil laws in late imperial China, but it is beyond the scope of this article to deal with this debate. For representative views from each side, see Huang 1996, 2001 and Bourgon 2002.

11 “Zhejiang zhi mucai” 1927.

12 SHMA, S145-3-1-12 (1953); S145-1-3 (1916).

13 Weng 1940, p. 1.

14 There were several changes in the official name of this organization, including *gongsuo* 公所, *huiguan* 會館, and *tongye gonghui* 同業公會. For detailed coverage of the organizational history of both SCATM and the Zhenxun Association, see Zhu 2006. Focusing on membership criteria and the election procedures of management boards, Zhu argues that the traditional timber trade guilds became “modernized” during the mandated reorganizations in the Republican era. This study, on the other hand, argues for significant continuities in

organization of wholesale sellers. Most of them purchased timber directly from Fujian, shipped it to Shanghai in junks they owned or rented, and made sales to local or long-distance buyers.

Imported timber began to arrive in quantity in Shanghai in the 1890s. Imports met the surging demand generated by the meteoric rise of modern urban buildings. The long-term fall in trans-Pacific shipping costs made imports of bulky timber economically viable. Many retail stores were opened in the international settlements north of the Chinese city. In 1905, the Zhenxun Association of Imported Timber (*Zhenxun Yangmu Ye Gongsuo* 震巽洋木業公所) was founded in the international settlements.¹⁵ Members of the Zhenxun Association ordered timber from large import-export foreign firms.¹⁶ North American pine accounted for the bulk of imported timber. Hardwoods from the Philippines and Borneo were also popular. The vast majority of imported lumber was consumed locally in Shanghai. Construction of office buildings for government agencies and large companies, factories, grand hotels, and luxurious Western-style houses were the first to boost demand. Construction contractors were the most important customer base for members of the Zhenxun Association.¹⁷

The two timber trade guilds left rich archival materials from the 1880s to the 1930s.¹⁸ The records include detailed organizational histories, thus providing a good opportunity to understand the institutional arrangements and to evaluate their effectiveness. In particular, the archives contain both organizations' internal regulations in different periods, letters of correspondence, and records of disputes that occurred between members and with non-members, including disputes that were resolved within the guilds and those that eventually went to court.

However, the archival collections are not complete. Apart from historical regulations, litigation records, and correspondence with government authorities that were preserved for their apparent importance as evidence of the organizations' legitimate status and specific aspects of their operation, most extant dated routine documents are clustered around random months of particular years. Therefore, the ultimate disposition of many cases is unknown to us. We cannot even guess at the proportion of cases resolved by the merchant guilds and those that eventually involved the court. Nevertheless, the documents produced in the routine operations of the merchant organizations reveal the repertoire of measures that were actually implemented at the organizational level and member merchants' response to different dispute resolution strategies. To a certain extent, the perceived effectiveness and desirability of different measures can be glimpsed from the member

terms of the economic functions and internal regulations of these two guilds, irrespective of the nominal reorganizations and title changes.

- 15 The name of the association, Zhenxun, is derived from the names of two trigrams from the Chinese classic *Book of Changes* that symbolize "wood," understood as one of the five mutually generating and inhibiting elements of cosmic creation. *Zhenxun Muye Gonghui baogao lu*, pp. 3–9.
- 16 The most influential foreign firms in this business were China Import & Export Lumber Company, Elles & Company, East Asiatic Company, and Canadian Trading Company. See "Shanghai muye jianshi ziliao" 上海木業簡史資料, SHMA S145-3-1-12 (1953).
- 17 See an investigation on the timber market conducted by the Shanghai Bureau of Social Affairs in 1935, SHMA S145-1-47.
- 18 These materials are preserved in the SHMA, fonds NO. S145.

merchants' requests that certain regulations be applied and their opposition toward others. Moreover, to gain a fuller perspective, I have collected about two hundred and fifty court cases of timber trade debt litigation between 1878 and 1932 from *Shenbao* 申報, the daily local newspaper that carried a section containing succinct reports of court cases.

THE RISKS OF DEFAULT AND INFORMATION ASYMMETRY

This section delineates the nature and manifestation of the risks of default and information asymmetry in the trade of timber, while the following sections will examine the solutions offered by different institutions and their collaboration.

Default was the most common cause of disputes, and it could take many forms beyond an outright refusal to pay. For example, there is the problem of merchants trying to exploit changes in market prices long after orders were placed. Such cases might arise when buyers refused to pay the previously agreed-upon price when market prices fell, or when sellers demanded extra payment if market prices rose after the conclusion of the deal.¹⁹ Furthermore, how much time should be allowed for the buyer to pay up after delivery was another issue. Since its establishment in 1875, SCATM extended the time allowance after delivery several times, from seventy days to four months, as a reasonable interval for both sellers and buyers. The four-month term then became a mutually recognized customary practice after 1898.²⁰ Delays beyond the fourth month would incur market interest.²¹

To some extent, the lengthening of credit terms between 1875 and 1898 reflected the relative ease with which Shanghai timber merchants could finance their business. Those were the years when Shanghai gradually rose to become the new distribution center for Fujian timber for Zhejiang and Jiangsu. The area supplied by Shanghai's timber merchants expanded beyond the immediate vicinity of Shanghai to cover a larger hinterland. As buyers from more remote places came to Shanghai to buy wood, longer intervals were required for them to ship back the purchased timber, make sales, and earn the money to repay the sellers in full. The extension of the payment deadline tells us that Shanghai wholesalers essentially financed these delays. In contrast, the timber merchants in Shanghai paid their Fujian suppliers upon signing the contracts, that is, long before the arrival of the timber at Shanghai.²² In other words, Shanghai was not only the center of redistribution, but also financed the operations of upstream and downstream traders.

This financing capacity was made possible thanks to Shanghai's financial institutions. Several documents mention that the timber merchants' ability to bear the buyers' delay in

19 For examples of such cases, see *Shenbao* 1898.8.31 (sec. 3), 1906.1.17 (sec. 9).

20 These regulations can be found in SHMA S145-1-2, S145-1-3.

21 The four-month allowance was restated in SCATM's regulations in 1916 and 1927, and was quoted by both the selling and buying sides on a number of occasions to justify their respective claims. For example, in a collection of more than two dozen letters from member merchants to SCATM suggesting issues to be prioritized by the guild, the four-month term was constantly mentioned as the principle to be upheld. See SHMA S145-1-13 (1927). For an example of customers recognizing the four-month provision and using SCATM's other regulations to argue their case, see S145-2-7, pp. 86–103 (1930).

22 SHMA, S145-2-7, pp. 59–62 (1930).

payment depended on the liquidity situation in Shanghai's financial market.²³ In fact, close business connections between timber merchants and native banks can be found in other important centers of the timber trade such as Nanjing and Hankou. Failure to repay bank loans was commonly cited as cause for a timber firm to be sued in court.²⁴ The interdependence between native banks and timber firms was further intensified by cross-holdings of their shareholders.²⁵ Sometimes the bankruptcy of a large timber firm could drag down several native banks and start a small financial crisis in the city.²⁶

Although Shanghai timber merchants could accommodate some delays on the buyers' side in order to make more sales, there had to be a limit. Effective means of preventing excessive arrears were needed to protect the interests of members. An extra delay of one or two months would be unpleasant for individual sellers, but not worthwhile taking through the litigation process, which was uneconomical in terms of both time and money. However, occasional short-term delays, if left unpunished, would lead to a systematic extension of the customary time limit and compromise the common interests of the whole group.

Moreover, what troubled the timber merchants the most was information asymmetry. They found it difficult to learn the solvency of a potential customer. They were always concerned to avoid entering sales agreements with customers who were already deeply indebted.²⁷ Some speculative customers placed new orders with no intention of repaying old debts, secretly transferred the revenue made through resale to their relatives, and suddenly announced bankruptcy to deny payments to creditors. For example, a Rongchang timber firm purchased timber valued at more than 10,000 silver *yuan* in total from eleven Shanghai stores within a period of two months. The eleven firms only found out about the Rongchang firm's huge debt after its sudden announcement of bankruptcy.²⁸

Having laid out the problems, this article will in the following sections turn to the solutions. I will examine in sequence the private-order solutions based on reputation mechanisms at the timber trade guilds, the more formal solutions offered by the domestic and mixed courts in Shanghai, and the inter-organizational (vertical) and cross-regional (horizontal) collaboration efforts among these institutions.

INTERNAL MECHANISMS AT THE TIMBER GUILDS

The two timber trade guilds used information sharing and group sanctions to reduce the threat of payment defaults by both members and outsiders. Members were required to report any customer who failed to pay by the designated time limit, and the guild would then send a notice to all its members to stop doing business with the reported customer until the arrears in question were cleared. The pooling of information on default

23 *Shenbao* 1919.1.3 (sec. 10).

24 For example, see *Shenbao* 1884.2.6 (sec. 3), 1899.2.4 (sec. 9), 1904.5.29 (sec. 3), 1909.1.7 (sec. 12), 1923.7.6 (sec. 16), 1927.4.4 (sec. 15).

25 *Shenbao* 1923.3.1 (sec. 14).

26 *Shenbao* 1875.8.13, 1910.8.22 (sec. 12), 1910.8.26 (sec. 11), 1910.8.31 (sec. 12).

27 SHMA S145-1-2; S145-1-7, pp. 13–17, 63–66.

28 For other examples of such cases, see SHMA S145-2-6, pp. 49–94 (1932).

behavior helped alleviate the information asymmetry that might cause members to enter into risky contracts with deeply indebted customers. The threat of exclusion from trade and the loss of reputation to a whole group of merchants increased the cost of default. Such measures had been adopted by SCATM in the 1880s and the Zhenxun Association by 1911.²⁹ The 1925 and 1930 regulations of the Zhenxun Association further added that the group sanction mechanism also applied to situations when customers attempted to take advantage of market price decreases after orders were placed.³⁰

The operation of these enforcement mechanisms can be seen in what has survived of the guilds' routine correspondence. Each month, SCATM asked members to submit detailed information on accounts receivable that had been outstanding for over four months. SCATM's request came with the proviso that if a member firm neglected to report customers who did not pay on time, it could not request the guild's assistance in future disputes about these transactions.³¹ The guild then added up each individual customer's debts to its members and took a first-step measure of writing to late debtors in the name of the organization pressing for immediate payment.³²

The threat of group sanction was also invoked from time to time. For example, the council notified all members to cease trading with the Yi Tai Feng firm in Wujiang County after it ignored several letters from SCATM demanding immediate payment to a member firm.³³ SCATM also published announcements in newspapers, urging debtors to clear outstanding accounts in time and threatening to impose group sanctions at the beginning of the following month.³⁴ Letters from members demanding that the guilds issue notice to cease trading with certain customers showed that the warning of a group sanction was considered a valuable weapon. For instance, the Chang Yuan Xie timber firm requested that SCATM issue a notice to halt trading with Cheng Dechang's store, located in Suyang in Jiangsu province, on the grounds that Cheng Dechang still owed the firm more than 200 *yuan* from a prior year's transaction.³⁵

Sometimes the organization led campaigns against groups of customers in particular places based on the common needs of members. Such a campaign directed at the Shahe group of timber merchants in Qingkou town was organized in 1929. Seven members of SCATM submitted lists of timber stores and the amounts owed by each. For example, seven timber stores in Qingkou owed Chang Yuan Xie about 1,900 *yuan*. The organization

29 See the regulations of SCATM in 1898 and 1916 in SHMA S145-1-2 and S145-1-3; and the 1911 regulations of the Zhenxun Association in SHMA S145-1-7, pp. 63–66.

30 SHMA S145-1-7, pp. 13–17.

31 For examples of the SCATM's monthly notice for members to submit names of customers in arrears, see SHMA S145-2-7, pp. 18–23, 39–41 (1930).

32 For examples of the SCATM's letters to debtors urging payment, see SHMA S145-2-7, pp. 24–25, 31–35, 42–58 (1930).

33 SHMA S145-2-7, pp. 63–69 (1930).

34 Two of such public announcements on newspapers are preserved, see SHMA S145-2-7, pp. 12–14 (1930).

35 SHMA S145-2-7 (1927).

produced an aggregate list that it sent to the Qingkou Chamber of Commerce to hasten payment.³⁶

The timber trade guilds also assumed the authority to adjudicate disputes between members. For bankruptcy cases, at the request of owners or creditors, the organization could seize property, reckon accounts, and oversee the distribution of a bankrupt firm's liquidation to its creditors and shareholders. The guilds required a timely report of any change in ownership or management at member firms. This information was critical to bankruptcy cases, for creditors usually only dealt with managers and lacked information about the owners and their respective shares. Partners in a dispute over the extent of each one's liability also sought the guilds' adjudication.³⁷

WHY PLAY BY THE RULES?

Effective measures were needed to ensure that members conformed to notices of group sanction, or else the threat would not be credible. Although it was in the common interest of all members to maintain the effectiveness of the sanction mechanism, there was a free-rider problem. When no other merchants would trade with the defaulting customer, a member might be tempted to take advantage of the opportunity and negotiate a good deal for himself. If the defaulting customer could not pay cash, a higher price could be obtained to compensate for his higher probability of future default again, and for the strong bargaining power of this single merchant who was still willing to sell to him. What would prevent the guilds' members from ignoring the organizations' command and taking up such opportunities?

An effective instrument that helped reduce members' temptation to seek a free ride was a security deposit. The guild took a deposit of several hundred silver *yuan* from each member, the so-called "security to uphold the agreement" (*jianyi zhi zhi* 堅議之質). The fund was deposited in native banks and generated interest at market rates to be distributed to members at the year-end clearing of accounts. Should any member disobey the order to cease trade with sanctioned customers or violate any other internal regulations of the organization, the deposit would be confiscated to reward the informer or saved as a collective fund to pay for holding festivals and other ritual events.³⁸

The security deposit was only one component of what ensured members' conformity with organizational regulations. Additionally, the guilds provided a series of exclusive benefits that could only be received by a member in good standing. The potential loss of the entitlement to such benefits would weigh against whatever profit that could be gained by violating the regulations.

A most important excludable benefit was the enrollment in the guilds' collective taxation arrangement. *Renjuan* 認捐, or "undertaking contributions," – whereby merchant organizations assessed taxes on their members and delivered the cumulative annual tax quota to the local government and other taxation agencies in lieu of direct taxation by

36 SHMA S145-2-7, pp. 104–22 (1929).

37 SHMA S145-2-4, 4-7 (1927).

38 SHMA S145-1-2.

the state – had been a well-established practice from the early Qing.³⁹ Even after the introduction of more direct commercial taxation, most noticeably through numerous *lijin* 釐金 transit tax stations set up along main transportation routes, in the 1850s merchant organizations were able to continue the practice of collective taxation, negotiating an organizational-level quota with the *lijin* bureaus and taxing individual members.⁴⁰

The two timber trade guilds in Shanghai applied the practice of collective taxation for a series of duties and fees, including *lijin* and other transit taxes, levies on particular kinds of timber, duties at domestic and maritime customs, and moorage rent payable to the Land Bureau.⁴¹ Membership certificates issued by the organizations ensured the fast passage of cargo through tax stations and minimized harassment from bribe-seeking taxation clerks.⁴² The guilds also mobilized collective endeavors to fend off higher taxes, as evidenced by SCATM's resistance to increased levies on timber-transporting junks from Fujian, and the Zhenxun Association's constant bargaining to reduce the total quotas of imported-timber "contributions."⁴³

When merchant organizations undertook a lump-sum tax quota, the funds, of course, had to be collected from member firms through fees. The amount members paid varied according to the sizes of businesses, but did not correspond exactly to their assessed taxes. In fact, membership fees were designed to be more progressive than taxes. Leading members contributed most of the organizations' funds. In the Zhenxun Association, the seven largest firms each made an initial one-time contribution of 3,000 taels and subscribed to a monthly payment of 40 taels, whereas ordinary members paid a 30-tael entrance fee and a monthly fee of less than one tael. Since voting rights in the association were linked to monetary contributions, the progressive taxation meant that larger firms shouldered tax burdens for smaller members in return for exercising control of the Association.⁴⁴ The funds of the merchant organizations also had a cushioning effect. When the various government agencies' frequent attempts to increase tax quotas succeeded, they were first absorbed by the collective funds before resulting in higher membership fees.⁴⁵

Previous studies on collective taxation mainly view it from the perspective of the state's need for efficient means of revenue extraction.⁴⁶ Additionally, I should stress, from the individual merchant's perspective, the collective taxation regime was considered a

39 Mann 1987, pp. 13–21.

40 For the introduction of the *lijin* tax and merchant reactions, see Mann 1987, pp. 94–120. Negishi Tadashi's study on Shanghai guilds suggests that the state's increasing demand for "contributions" from merchants after the mid-nineteenth century prompted the founding of many trade-based guilds as an organized response to such solicitations; see Negishi 1951, pp. 243–47.

41 Taxation-related matters are mainly covered in SHMA S145-2-5.

42 SHMA S145-1-7, p. 44 (1925).

43 SHMA S145-1-33 (1922); S145-1-7, pp. 26–31, 46–47 (1913–1925).

44 SHMA S145-1-7, p. 26 (1925).

45 For example, in 1925, when the Zhenxun Association had to elevate the monthly fees after the tax bureau's demand to increase their quotas by five times, it stipulated a 20 percent increase for ordinary members and a 30–40 percent increase for the top ten firms (from their already much higher base). See SHMA S145-1-7, p. 49 (1925).

46 A representative work of this approach is Mann 1987.

desirable and exclusive service performed by the guilds for their members. The capacity of each guild to negotiate tax rates with multiple state agencies made life simpler for merchants. A merchant covered by the collective arrangement of a commercial organization would be shielded from the unpleasantness of waiting to be assessed at a tax station and being subject to volatile tax rates and bribe-seeking clerks. Indeed, the Zhenxun Association mentioned the *renjuan* practice as a major benefit in its public letter to attract non-members.⁴⁷ Some merchants even chose to pay monthly fees to the Zhenxun Association simply for access to its collective taxation arrangement, although they were not officially registered as members.

SCATM also provided valuable services related to the long-distance and wholesale nature of its members' businesses. It handled issues with Fujian timber suppliers through the Fujian Peaceful Sea Association (Anlan Huiguan 安瀾會館) and maintained moorage space along the bank of the Huangpu River for its member firms to stock timber.⁴⁸ SCATM also negotiated for transport services on its members' behalf, which involved contact and negotiation with several associations of commercial junks both in Shanghai and along the coastal route. For example, the Renji 仁濟 Association of Commercial Junks in Ningbo provided regular reports to SCATM about the arrival, departure, and occasional delay of the timber junks owned or rented by the Shanghai firms. It also arranged guarding boats to sail with the timber junks at the request of SCATM.⁴⁹ Moreover, SCATM formed an alliance with the association of commercial junks to prohibit steamship transportation by members in return for significant discounts in junk rates.⁵⁰

The different services provided by the guilds, including contract enforcement, litigation support, collective taxation, transportation, and storage, may seem unrelated functions. However, the exclusiveness of such services banded them together into a mutually reinforcing system that promoted members' solidarity.⁵¹ Only members in good standing could have access to these services. Violators would have to face the probability of losing entitlement to not just one, but all of these benefits. In addition to such preventative measures as the security deposit, these exclusive collective benefits added to the cost side should a member weigh the net benefit of violating a regulation or not cooperating in group sanctions.

It should also be noted that the Shanghai timber trade organizations were not alone in establishing information sharing, group sanction, and security deposits. Similar practices

47 SHMA S145-1-7, pp. 39–40 (1925).

48 The riverbank used for timber storage presented an enduring problem when the state attempted to regulate the space along the Huangpu River. The negotiation went back and forth for almost two years, and ended with designated space for timber through compromise on both sides. SCATM also purchased some additional land at the Longhua port for storage. Some of the negotiation process can be found in *Shenbao* 1916.12.1 (sec. 10), 1917.1.4 (sec. 11), 1917.3.9 (sec. 10), 1917.3.16 (sec. 11), 1917.4.10 (sec. 11), 1917.4.26 (sec. 10), 1917.9.30 (sec. 10), 1918.1.30 (sec. 10), 1918.5.12 (sec. 10), 1918.6.12 (sec. 10), 1918.7.28 (sec. 10).

49 For examples of regular reports and letters to arrange guarding boats, see SHMA S145-2-8, pp. 75–123 (1929–1934).

50 SHMA S145-1-59 (1924).

51 Mancur Olson, Jr. has developed a theoretical framework regarding collective actions in groups, which argues that individual members are less likely to seek a free ride in groups that provide benefits only to active participants, i.e., excludable benefits, instead of non-excludable public goods. See Olson 1965.

are seen in many merchant organizations of different trades and localities. The Shanghai Tea Guild established similar stipulations in 1870.⁵² The Guild of Native Banks in Shanghai registered the shareholders, managers, and the amount of member banks, and made such information available to creditors in the event of a member bank's bankruptcy.⁵³ The Hankou Financial Guild, established in 1871, demanded security deposits of several hundred taels from each member bank.⁵⁴ The Guild of Mountain Products in Changsha stipulated that members should share information regarding the creditworthiness of contracted suppliers; it also required the reporting of customers in default and listed group sanctions as a last-resort measure.⁵⁵ Although the exact combination of specific regulations varied, they constituted a set of strategies commonly adopted in commercial guilds that aimed to alleviate problems of information asymmetry and default.

LOCAL COURTS IN SHANGHAI

The timber trade guilds' internal enforcement mechanisms could by no means resolve all default and bankruptcy cases. An issue of great interest is how merchants maneuvered between formal and informal platforms of dispute resolution. Shanghai's status as a treaty port, featuring several legal tribunals depending on one's business/residence location and nationality, added more variables to the mix. The question is to what extent these different platforms constituted a coordinated system of resolution that generated coherent expectations for potential litigants. If not, speculative litigants would be able to take advantage of the divergent promises at different tribunals.

There were many courts in Shanghai. The standard Qing bureaucracy centered on the Shanghai County Magistrate. The Magistrate, as the administrator of all aspects of local governance, heard cases in his *yamen* in the walled city. Appeal cases were heard by the Songjiang Prefecture and then the provincial-level officials of Jiangsu. In the Republican period, a local court was established as a separate entity from the local government.

Following the Opium War, foreign settlements were established north of the walled city from 1843. Foreign nationals of treaty powers were subject to the consular courts of their home countries.⁵⁶ With the growing Chinese population in the foreign settlements after the 1850s, a court was needed in the settlements to adjudicate disputes among Chinese people as well as those involving suits filed by foreigners against Chinese defendants. This need led to the Mixed Court of the British-American Settlement (later the International Settlement) and the Mixed Court of the French Concession, both formally established in

52 Du 2006, p. 43.

53 Du 2006, p. 58.

54 Rowe 1984, p. 174.

55 *Hunan Shangshi Xiguan Baogao Shu*, pp. 192–94.

56 Britain and the United States later replaced consular courts with independent Courts for China and appeal courts. In addition, a Court of Foreign Consuls was established in 1882 as an administrative tribunal to deal only with suits against the Shanghai Municipal Council, the governing body of the foreign settlements. See Yang 2006, pp. 46–56.

1869.⁵⁷ The mixed courts dealt with the nationals of China and non-treaty powers who were accused of offenses or crimes committed within settlement limits. While a Chinese magistrate sat for purely Chinese cases, a Western consular representative sat with the magistrate for cases where the plaintiffs were of treaty power nationality.⁵⁸

In addition to these formal courts, other entities could adjudicate small cases. In particular, the South-City Roadwork Bureau (Nanshi malu gongcheng ju 南市馬路工程局) was a proto-municipal organ established by Chinese gentry-merchants in 1895 in the Chinese city. The bureau was initially concerned with the construction of roads, but it came to take on broader responsibilities including maintaining public order and adjudicating small disputes. Since many timber firms were located in the south city, a number of cases involving them were decided by the Bureau.

Figure 1 shows the distribution of 255 timber trade debt cases that were brought to these different venues from 1878 to 1932, which I have collected from *Shenbao*, the daily local newspaper. While a small number of cases were reported in detail as interesting news, most of the cases came from a section of the newspaper that was devoted to summarizing the daily proceedings in the various Shanghai courts. Accounts up until the 1910s tended to provide more detail about the cases in court, even including the dialogues; entering the Republican era, however, the reports became increasingly succinct, usually including only the causes of dispute and the judges' verdicts. Foreign firms appeared as plaintiffs in twenty-five cases (9.8 percent), twenty of which featured the British firm China Import & Export Lumber Company, which was also a member of the Zhenxun Association.⁵⁹

Most of the cases were local. Based on the cases in which the occupations of both parties were known, the most common cause of a dispute in court was a contractor's failure to pay a timber firm (sixty-seven such cases in total). Because most of these construction projects were in the foreign settlements, these cases ended up in the mixed courts. A contractor often had the proprietor as his guarantor when he obtained timber and other construction materials on credit. It could also be the other way around, in which the timber firm acted as the guarantor of the contractor to the proprietor, agreeing to see to the completion of the project should the contractor abscond.⁶⁰ Moreover, some contracts stipulated that upon the completion of the project, the proprietor would pay the timber firm what it was owed directly.⁶¹ A dispute might thus arise between any pair within the timber merchant–building contractor–real estate owner trio. Finally, because contractors and

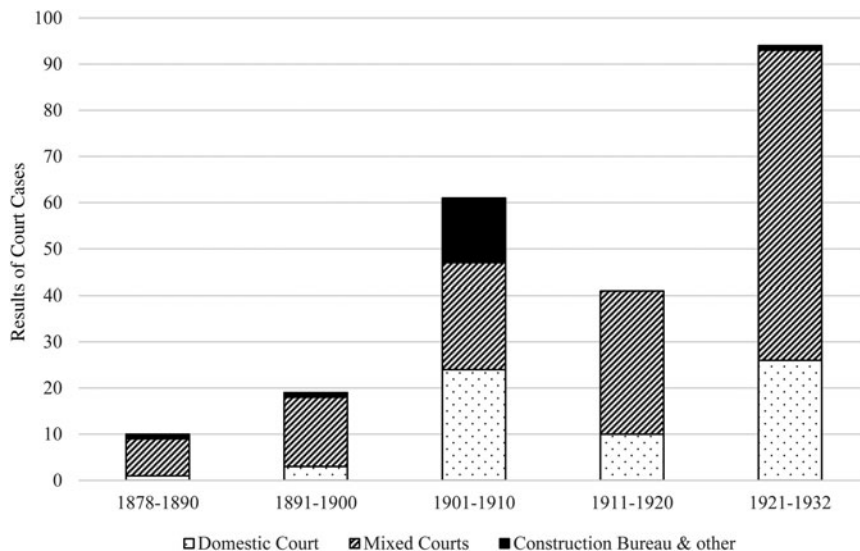
57 The prototype of the mixed court was first established in 1864 in the British Consulate and was composed of a Chinese official and a British assessor. For the process of the establishment of mixed courts, see Stephens 1992, pp. 44–47; Yang 2006, pp. 67–73, 91–96.

58 After the 1911 revolution, the personnel of the mixed courts came under the control of the foreign consulates. Foreign assessors could sit in purely Chinese cases, too. In 1927, the Mixed Court of the International Settlement was abolished and replaced by a Provisional Court presided over by only Chinese judges. In 1931, the Provisional Court was renamed the Local Court of the First Special District of Shanghai; in the same year, the Mixed Court of the French Concession was abolished and replaced by the Local Court of the Second Special District of Shanghai. See Stephens 1992, pp. 48–51, 64–65.

59 Foreign timber firms sent their Chinese compradors as representatives in the Zhenxun Association. SHMA S145-1-7, pp. 19–22 (1925).

60 For example, see *Shenbao* 1896.6.1 (sec. 3), 1902.9.14 (sec. 9), 1902.10.1 (sec. 9), 1919.11.7 (sec. 11).

61 For example, see *Shenbao* 1903.7.24 (sec. 3), 1905.5.16 (sec. 19), 1918.10.19 (sec. 11).

Figure 1. Number of cases by decade

timber merchants belonged to different guilds, disputes between them were beyond the influence of any single guild and were more likely to end up in court.

It is noteworthy that disputes between timber merchants, either in Shanghai or cross-regional, seldom showed up in court (ten such cases in total). When they did, cases usually involved multiple litigants and/or complex ownership-creditor disputes in bankruptcy cases. Litigation rarely arose from simple arrears in transactions between timber merchants. One reason for this rarity lay in the structure of cross-regional flow of goods and credit. If a Shanghai merchant failed to pay his Fujian sellers, the most likely process would be for the sellers to sue the Shanghai firm's dispatched-purchase office in the Fuzhou local court. If timber buyers who resided in another locality in Jiangsu or Zhejiang fell behind, it would be more effective to sue them in their locality than in Shanghai. Still, compared to the records of SCATM in which arrears disputes between timber merchants are most commonly seen, the absence of such cases in the Shanghai courts, especially those between local merchants, points to the effectiveness of the merchant guilds in resolving simple disputes among members.

It should be stressed that, despite the mixed court's peculiar status as a colonial institution and the political and legal tensions between China and the treaty powers it embodied, my examination of mundane commercial disputes shows that domestic courts and mixed courts were similar in their handling of such cases.⁶² The two dozen cases that involved foreign firms as plaintiffs, although a limited sample, indicate no deviation from the processes seen in purely Chinese cases. In principle, whether it was the Shanghai County Magistrate or the mixed courts that had jurisdiction depended on the residential or

62 Existing studies on the Shanghai mixed courts have focused on the interplay of power relations and the tensions between two different legal cultures. The materials used in these studies are mainly documents that reflected different parties' diverging stances as well as legal cases that stood out as manifestations of underlying clashes. See Yang 2006; Stephens 1992.

business address of the defendant. In practice, litigants had considerable flexibility when the case involved only Chinese nationals. Some litigants, when unsatisfied with the result of the proceedings in one court, brought the same case to another court in the hope of a more favorable verdict. However, such attempts, once revealed by the counterparty to the magistrates, always led to the same outcome: the original verdict was usually upheld unless important new material evidence was presented or significant wrongdoing in the previous proceedings was detected.⁶³ For example, in 1878, Wu Yongpu agreed to guarantee the defendant's debt of 1,900 taels to the plaintiffs and signed a contract at SCATM, which gave jurisdiction to the Shanghai County Court. Later, the creditors sued Wu at the French Mixed Court for failing to pay the remaining 400 taels on that debt. The Mixed Court Magistrate decided that Wu should come up with the payment within a week, or else be delivered to the Shanghai County Magistrate for further adjudication.⁶⁴

Court proceedings and verdicts went through a noticeable change during the Republican era, departing from Qing practices. The domestic court and mixed court seem to have evolved synchronously. As shown in Table 1, before the 1910s, courts were unlikely to issue a judgment that explicitly found the defendant guilty or innocent, or decide the specific monetary amount payable to each plaintiff. Most often, the court simply urged the litigants to settle their dispute. Even in cases where the court decided that one party was at fault, it refrained from dictating the exact amount of compensation, but instead left it open for the litigants to negotiate. The magistrates' verdicts often read "settle by a certain date" or "find a reliable merchant to bail out the defendant and help them settle." When the litigants failed to resolve the case after several such orders, detention or physical punishments might be used to urge the defendant to settle. The involvement of commercial guilds was also more visible before the 1910s. The court upheld settlements that had been brought about by the guilds, relied on the expertise of the guilds' directors to reckon accounts and estimate values, and referred cases to merchant guilds and the Chamber of Commerce for out-of-court mediation.

So in late Qing Shanghai, the Shanghai County magistrate, as well as the magistrates of the two mixed courts, followed similar procedures in handling commercial disputes as did their colleagues in other parts of China. As Maura Dykstra's study on insolvency cases in Qing dynasty Chongqing has shown, the magistrates followed a deliberate strategy that recognized the court's limited information and the inflexibility of its verdicts.⁶⁵ The court urged litigants to employ mediation platforms outside the court and limited its involvement to situations in which out-of-court negotiations had been exhausted. But even then, besides ordering short-term detainment and light physical punishment, the court seldom mandated solutions other than those reached outside of the courtroom. Moreover, it could not offer effective means of enforcing its solutions if one party was determined not to comply. The magistrates were willing to intervene when a litigant claimed that the director of the commercial guild was partial or unfair in his mediation,

63 For example, see Huang Wenwei vs. Huang Yunyu in *Shenbao* 1902.6.11 (sec. 9).

64 *Shenbao* 1878.1.4 (sec. 3).

65 Dykstra 2014.

Table 1. Results of court cases

Result	pre-1911		post-1911		Total
	Domestic Court	Mixed Courts	Domestic Court	Mixed Courts	
Explicit Verdict	19%	14%	94%	75%	58%
Order Timely Settlement	67%	61%	6%	7%	27%
Commercial Organization Involved	14%	17%		3%	7%
Private Settlement		6%		8%	5%
Canceled		3%		7%	4%
Average Monetary Amount (taels)	4,707	1,603	1,948	1,850	2,203
Total # of cases	21	36	31	73	161

but it did nothing more than appoint other merchants as mediators.⁶⁶ When everyone was willing to participate, the flexibility of the system produced compromises acceptable to all parties. But the system was virtually powerless if one or both parties refused to compromise, resulting in deadlocks that could endure for months and even years.

All this began to change in the 1910s. Both domestic and mixed courts became more willing to issue explicit verdicts and less likely to refer cases directly to merchant guilds. The improved capacity of the courts owed much to the establishment of a new position, the court accountant. This new office greatly reduced the court's reliance on commercial organizations for reckoning accounts. The result of the court accountant's auditing became the most important basis for judgment.⁶⁷ The courts' better grasp of a debtor's financial situation allowed the judge to decide the amounts debtors should pay. It also made the auction of the debtor's assets a more feasible option to the court, which was further facilitated in the mixed court by the introduction of court auctioneers.⁶⁸ Moreover, the employment of attorneys was no longer limited to Sino-foreign cases, but became common practice among Chinese merchants as well. When defendants failed to show up in court, the judge now ordered the plaintiffs to publish a notice in local newspapers. If the defendant (or his representative) failed to register at the court within the specified period, typically two weeks, the judge had no hesitation in making verdicts in the absence of the defendant when the evidence presented by the plaintiff's attorney was considered strong enough.⁶⁹ Twelve cases from the Republican era, 11 percent of the cases with verdicts, were decided in the absence of defendants or their representatives.

While outright referral of cases to out-of-court forums of mediation became uncommon, the involvement of commercial guilds in court proceedings continued. Guilds retained legal consultants for themselves and their members.⁷⁰ Most importantly, guilds were often consulted by the court with regard to customary practices in specific matters. For instance, in a typical case that concerned the triangle relationship between proprietors,

66 For example, see a dispute between Xu Wenshu and Sun Shaoqing at the Mixed Court of the International Settlement in *Shenbao* 1899.1.25 (sec. 9), 1899.2.6 (sec. 9), and 1899.5.12 (sec. 3).

67 For example cases, see *Shenbao* 1918.11.12 (sec. 11), 1919.1.18 (sec. 11), 1918.11.25 (sec. 11), and 1922.1.8 (sec. 12).

68 Kotenev 1925, p. 272.

69 For example, see *Shenbao* 1919.11.27 (sec. 11).

70 SHMA S145-2-7, pp. 78-80 (1932).

hired contractors, and timber stores, the Jiangsu Provincial Court asked the Zhenxun Association whether the proprietor or the contractor of the project should sign the receipt for the timber.⁷¹

The legal basis for such consultations came from a 1913 decision by the Supreme Court of China (*daliyuan* 大理院) that stated:

Civil cases are decided first according to express provisions of law; in the absence of express provisions, then according to customs, and, in the absence of customs, then in accordance with legal principles (*tiaoli* 條理).⁷²

The Chinese term *tiaoli* is best understood in this context as the idea of “the generally-acknowledged best principles to apply in such cases in the interests of regularity and order.”⁷³ This decision, together with the collection of the Supreme Court’s precedents, served as the *de facto* civil law before 1930, when the Republican Civil Code was finally promulgated. Regular and mixed courts often invoked as “customs” or “legal principles” both the principles delineated in the 1911 Draft Civil Code of the Great Qing and the short-lived 1906 Qing Bankruptcy Code, as well as the regulations of commercial guilds.⁷⁴

It was the common understanding that business customs, as enshrined in the regulations of commercial guilds, were enforceable principles in court as long as they were not contradictory to express stipulations of law. When Zhu Yaoqing, a Taicang merchant indebted to a number of SCATM timber firms, lost a lawsuit over his debts in Taicang County Court, he hired an attorney to appeal his case and accused his creditors of violating SCATM’s own regulations regarding standardized measurements and fair pricing. In response, his creditors requested that a SCATM representative testify that they had always conformed to the organization’s regulations. In the end, Zhu’s appeal was not accepted by the Jiangsu Supreme Court for lack of evidence (not for lack of grounds).⁷⁵ The significant point revealed by this incident is that guild members, non-members, and the court all agreed on the standards of conduct in the timber trade and that the formal court system had a role in supporting these private business norms.

CROSS-REGIONAL DISPUTES AND THE CHAMBER OF COMMERCE

Cross-regional disputes presented informational and enforcement challenges that were more severe. The network of chambers of commerce, established in 1904, proved essential for the resolution of cross-regional cases. Previous studies have shown that chambers of commerce inserted a more formal venue of vertical communication between merchant organizations and the courts. Trade-based guilds (and to a lesser extent native-place

71 SHMA S145-2-6 (1927).

72 *The Chinese Supreme Court Decisions*, no. 1, 2d year A.C. 64, (in Kotenev 1925, p. 431).

73 Stephens 1992, p. 87.

74 Huang 2011; Kotenev 1925, pp. 257–71; Stephens 1992, p. 88.

75 SHMA, S145-2-7, pp. 86–103; S145-2-6 (1930).

organizations) were brought under the umbrella of the chamber of commerce network. The chamber of commerce thus concentrated the strengths of long-established, non-court social mediation and took on officially recognized authority in providing final resolution to commercial disputes. This newly integrated merchant forum remained the primary platform for settling contentious commercial disputes until the 1940s.⁷⁶ This section will show that, in addition to its role in narrowing the gap between local courts and private mediation embedded in merchant guilds, the nationwide system of chambers of commerce also served the important function of facilitating cross-regional communications and negotiations between merchants and their guilds in different localities.

Of the two dozen cross-regional arrears cases collected from the SHMA, half of them involved one or more chambers of commerce (see Table 2). In disputes that involved timber merchants who were based in different localities, it was common to see the flow of information and request between the two localities' timber trade guilds through their respective chambers of commerce. In cases where there was no specialized organization for timber trade, the local chamber of commerce would contact the timber firm in question directly. A chamber of commerce could also address county courts within its jurisdiction as an equal entity and request the magistrate's assistance in locating and detaining suspected defaulters.⁷⁷

Take, for example, a case that started as a dispute between two local firms in the Yongjia County of Wenzhou, Zhejiang province, but also involved merchants based in Shanghai.⁷⁸ Lin Zhensheng 林震升 purchased timber planks from Liu Zhenfeng 劉震豐 in Yongjia with a void promissory note and soon announced bankruptcy. Lin then absconded to Shanghai and sold the contested timber to Yin Ji 寅記 and Sheng Dalong 盛大隆, two member firms of the Zhenxun Association. Liu and other creditors of Lin sent representatives to Shanghai to capture Lin. They also sought help from the Yongjia Timber Trade Guild, which forwarded their request to the Yongjia Chamber of Commerce. That chamber then contacted the Shanghai Chamber of Commerce, requesting that the two Shanghai stores withhold their payment to Lin until Lin and his creditors reached a settlement agreement under the mediation of the Yongjia Timber Trade Guild.

A month later, the Yongjia Chamber of Commerce updated the Shanghai Chamber of Commerce, informing them that the dispute had been resolved with all the creditors' agreement on a proportional settlement. It requested that the two Shanghai stores entrust the payment of about 1,500 silver *yuan* owed to Lin to the Yongjia Chamber of Commerce's account in the Bank of China, because the Chamber had taken on the responsibility of distributing payment to Lin's creditors.

Upon receiving the forwarded notice from the Shanghai Chamber of Commerce, the two stores sensed the potential risk of surrendering the money to the Yongjia Chamber of Commerce without Lin's written consent, for, "Although Lin is indebted to many others, he is a creditor to us. Without Lin's authorization and a legal procedure, we cannot deposit

76 Ma and Zhu 1993; Ma 1996; Dykstra 2013.

77 For example, the Suzhou General Chamber of Commerce requested the magistrate of Zhenze County to urge a defendant to make his presence in court at Jiaying. Suzhou Municipal Archives [hereafter SZMA], I14-001-0817-068 (1906).

78 Detail of this case is found in SHMA S145-2-6.

Table 2. Cross-regional arrear cases

No.	Source	Loc. in Archives	Year	Brief	Chain of Communication
1	SHMA	SI45-2-7, pp. 36–38	1930	Chengxie Ji (Changshu) owed Zhengyu	SMATM noticed members of Chengxie Ji's arrears to Zhengyu and asked if there were other creditors
2	SHMA	SI45-2-7, pp. 104–22	1929	collective pressing for payment of debt (agst. Qingkou)	creditor — SMATM — outside defaulting customer
3	SHMA	SI45-2-7, pp. 59–62	1930	Fulongtai (Suyang) owed Shanghai firms	creditor — SMATM — outside defaulting customer
4	SHMA	SI45-2-7, pp. 42–58	1930	collective pressing for payment of debt (agst. Suyang)	creditor — SMATM — outside defaulting customer
5	SHMA	SI45-2-7, p. 141	1931	Hengtaixiang Yuji (Kunshan) owed Shentai (Shanghai)	creditor — SMATM — outside defaulting customer
6	SHMA	SI45-2-7	N/A	Cheng Dechang (Suyang) owed Changyuanxie (Shanghai)	creditor — SMATM — outside defaulting customer
7	SHMA	SI45-2-7, pp. 136	N/A	Mao Sentai (Changzhou) owed Yongtai (Shanghai)	creditor — SMATM — outside defaulting customer
8	SHMA	SI45-2-7, pp. 63–69	1930	Yifengtai (Luxu) owed Yongtai (Shanghai)	creditor — SMATM — outside defaulting customer; SMATM sent notice to members to stop trade with the customer in question.
9	SHMA	SI45-2-7, pp. 71–73	1931	Tongsheng Hao (Shandong) owed Yongsheng (Shanghai)	creditor — SMATM — Shanghai CoC — Rizhao CoC — debtor
10	SHMA	SI45-2-7	N/A	Wuwen Ji (Suzhou) owed Shuntai (Shanghai)	creditor — Zhenxun — Shanghai CoC — Suzhou CoC — debtors
11	SHMA	SI45-2-7, pp. 137–38	1931	Chunmao (Hangzhou) owed Shuntai (Shanghai) etc.	guarantor — Zhenxun
12	SHMA	SI45-2-6, pp. 49–94	1932	Yongxingshun (Wuxi) owed Kaitai etc. (Shanghai)	creditor — Zhenxun, SMATM — Timber Trade Organizations of Changzhou, Wuxi, Yixing; creditor — Zhenxun, SMATM — Shanghai CoC — Wuxi CoC, Yixing CoC
13	SZMA	II4-001-0264-056	1912	Tongfaxiang (Suzhou) owed Laixiangxing (Changzhou)	creditor — Changzhou CoC — Suzhou CoC — debtor
14	SHMA	SI45-2-6	N/A	a case in Yongjia that involved Yin Ji & Shengdalong (Shanghai)	creditor — Yongjia Timber Trade Organization — Yongjia CoC — Shanghai CoC — SMATM — related members
15	SZMA	II4-001-0177-025	1906	Huyuanfeng vs. debtors	creditor — Suzhou CoC — Xijin CoC & Jiangyin CoC

Continued

Table 2. Continued

No.	Source	Loc. in Archives	Year	Brief	Chain of Communication
16	SHMA	SI45-2-6	1911	Tongsen (Hubei) owed Ruida etc. (Shanghai)	creditor — Shanghai CoC — Wuchang Quanye Circuit — Jiangxia County
17	SZMA	II4-001-0263-162	1911	Wang Hengtai (Suzhou) owed Zhentaisheng (Jiaxing)	creditor — Jiaxing CoC — Suzhou CoC — debtor
18	SZMA	II4-001-0172-005 II4-001-0817-068 II4-001-0172-008 II4-001-0172-010	1906	Zhang Hongchang etc. (Zhenze) owed Zhengxing (Jiaxing)	creditor — Jiaxing CoC — Suzhou CoC — Zhenze County Court — debtors
19	SZMA	II4-001-0267-065	1912	Lv Dalai (Tongli) owed Yifengchang (Suzhou)	creditor — Suzhou CoC — Tongli CoC
20	SZMA	II4-001-0165-041	1906	Tang Hongmao (Suzhou) owed Yuchangfeng (Hupu)	creditor — Changzhou County Court — Suzhou CoC — timber trade org. — debtor
21	SZMA	II4-001-0107-046	1912	Li Ming (Suzhou) owed Yichangheng (Shanghai)	creditor — Shanghai Bureau of Agriculture, Industry, and Commerce — Suzhou CoC — debtor
22	SZMA	II4-001-0255-154 II4-001-0177-045	1910	Jin Renji (Suzhou) owed Yingfengyu (Changzhou)	creditor (Changzhou) — Bureau of Agriculture, Industry, and Commerce — Suzhou CoC — timber trade org. — debtors
23	SHMA	SI45-2-7, p. 86–103 SI45-2-6	1930	Zhu Yaoqing (Taicang County) owed Kaitai etc. (Shanghai)	SMATM — Zhu Yaoqing (Taicang); SMATM — Taicang Timber Trade Organization; lawsuit at Taicang County Court

Note: SZMA (Suzhou Municipal Archives); SHMA (Shanghai Municipal Archives); CoC (Chamber of Commerce).

the money owed to Lin to other entities' accounts." To avoid being found at fault by Lin in the future, the two stores entrusted the money to the Zhenxun Association, which contacted the Yongjia Chamber of Commerce and arranged the deposit.

The Yongjia-Shanghai case was representative of the cross-regional flow of information and requests through commercial organizations and chambers of commerce. Moreover, these organizations dealt with complex issues when representing members to ensure fairness and help them avoid potential risks, such as when the Yongjia Chamber of Commerce distributed payment to Lin Zhensheng's creditors and the Zhenxun Association dealt with the sensitive payment for the two Shanghai stores.

The coordinated action of these organizations was far more flexible and effective than if the parties had had to rely on the court system exclusively. The formal legal system reacted slowly to bankruptcies and thus could not act in a timely fashion to seize the properties of the bankrupt firm before its managers and shareholders appropriated any remaining assets and fled the city. In the above case, by having the two stores in Shanghai hold on to the money payable to Lin Zhensheng until further instruction, the guilds representing the creditors effectively froze part of Lin's assets. The right to dispose of the frozen money was then entrusted to a third party, the Yongjia Chamber of Commerce, to ensure that Lin's residual assets would be fairly distributed among his creditors.

The efficiency and effectiveness of this disposition owed much to a shared informal norm as to how to deal with suspicious bankruptcies. This norm was exemplified by an article in the 1925 regulation of the Zhenxun Association, which stated:

If any indebted customer shows an inclination to flee town or his firm seems about to go bankrupt, it would be too much of a delay to go through all the formal legal procedures for the official agencies to act in time. With the universal consent of our members and in reference to the practices in other cities, (in future situations like this) we should gather local police officers and gentlemen jointly to impound the property of the suspicious party and take him into custody, while at the same time submitting formal petitions to the court.⁷⁹

The operation of this informal procedure in cross-regional cases relied on the aforementioned chain of communication through chambers of commerce. Institutional arrangements at the organizational level helped remedy some limitations of the formal court system in resolving contradictory evidence, acquiring the knowledge of specific business customs in different trades, and enforcing judgments given the mobility of long-distance traders and the opacity of their property. Communications and collaboration between merchant communities in different localities, often through the mediation of chambers of commerce, could often bypass the slow hierarchical procedures in the formal bureaucracy and enable action in a more timely fashion to deal with cross-regional disputes. The role played by the network of chambers of commerce was particularly important given the lack of political unity and legal clarity in the early years of the Republican period. The chamber of commerce was able to mitigate the obstacles against solving cross-regional conflicts in a

79 SHMA S145-1-7, pp. 13-17.

way that neither local magistrates/courts nor merchant guilds could have done, a function that was only taken up by a more fully constructed and connected legal system much later.

THE CASE OF YONG XING SHUN

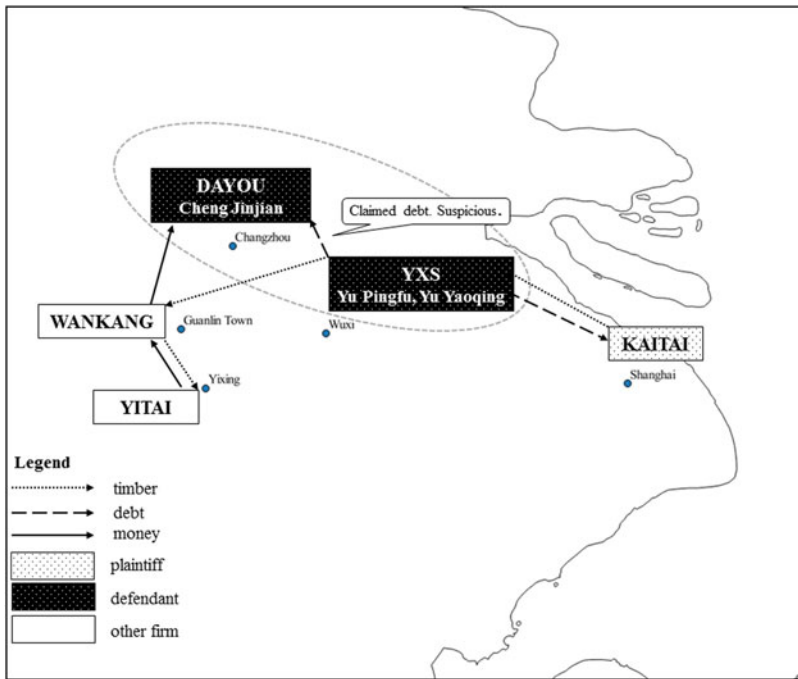
Having examined the solutions offered by different institutions to the default problem, this section revisits the case against the Yong Xing Shun Timber Store in Wuxi (hereafter YXS) mentioned at the beginning of this article. The YXS case involved complicated trading relations among timber merchants in Shanghai, Changzhou, Wuxi, and Yixing. It exemplifies the complexities of an insolvency case resulting from a chain reaction from an exposed defaulting, of maneuvers and negotiations happening outside of the courtroom during the trial, and of the measures taken by the timber trade guilds to safeguard members' rights.⁸⁰ This is a case where all the institutions and channels of communications discussed above were put into full operation and yet still failed, which makes it a good illustration of the capacity and upper limits of the system.

The incident started in 1932 with YXS's timber purchase from Yin Ji in Shanghai. YXS paid 2,000 *yuan* with a guaranteed promissory note issued by a native bank in Changzhou, with the remaining 4,900 *yuan* left unpaid. When his entreaties for the remaining payment failed, Yin Ji sued the manager of YXS, Yu Pingfu 俞屏甫, his nephew Yaoqing 俞耀卿, and their accomplice Cheng Jinjian 程金鑑, who was the owner of the Dasheng 大生 and Dayou 大有 timber stores in Changzhou, at the Wuxi County Court for fraud and won the lawsuit. The Zhenxun Association, upon receiving the news, sent letters to its members, as well as SCATM and the timber guilds in Wuxi, Changzhou, and Yixing, disclosing the defeat of YXS and demanding that all the parties served notice stop trading with the three fraudsters.

From the Zhenxun's notice, the Kaitai Timber Store, a member of SCATM, learned of Yin Ji's lawsuit against YXS. Kaitai's manager realized that his firm might suffer from YXS's insolvency since it had sold YXS 1,400 *yuan* worth of timber totally on credit. Kaitai sent an employee to Wuxi to conduct secret investigations into YXS. The employee found out that the timber purchased from Kaitai had already been resold to the Wankang 萬康 Store in the town of Guanlin 官林. Wankang had been directed by YXS to directly forward the proceeds of the sale to Cheng Jinjian to repay YXS's "debt" to the Dasheng and Dayou timber stores. Finally, Wankang had sold the Kaitai timber to the Yitai 益泰 Store in Yixing. (See Figure 2.)

Believing that YXS would not be able to pay for its timber in full, Kaitai petitioned the Shanghai General Chamber of Commerce through SCATM to ask for the assistance of the chambers of commerce in Wuxi, Yixing, and Changzhou. Kaitai's managers argued that these chambers should declare all these transactions null and void and have Kaitai's timber shipped back to Shanghai. Unfortunately, Kaitai's request was not legitimate because only two months had passed since its transaction with YXS. According to the guild's regulation, YXS still had another two months to make good with Kaitai. Moreover, YXS's sales to downstream customers were legitimate transactions and could by no means be repudiated at Kaitai's demand. However, because YXS had been found guilty of intentional fraud at

80 Details of this case are found in SHMA S145-2-6, pp. 49–94 (1932).

Figure 2. Kaitai vs. Yong Shin Shun (YXS), 1932

court, SCATM and the Shanghai Chamber of Commerce deemed Kaitai's request to be reasonable and supported it anyway.

As one would expect, Yitai refused to return the timber that it purchased legally from Wankang without reimbursement, while Cheng Jinjian refused to return the money to Wankang on the grounds that the money was to cover YXS's debts. At the same time, YXS and Cheng Jinjian accused each other of having masterminded the fraud and appropriated all the benefits, leaving the other with no money at all.

Investigation conducted by the Wuxi Chamber of Commerce suggests it was most likely that Cheng Jinjian and the two Yus conspired to fabricate YXS's huge debt to Dasheng and Dayou, the two stores owned by Cheng Jinjian. Proceeds from the resale of the timber obtained on credit from Kaitai and Yin Ji were then transferred to Cheng Jinjian in the name of repaying YXS's debt. After embezzling whatever was left in YXS, Yu Pingfu and Yu Yaoqing announced the bankruptcy of YXS in order to deny payment to the two Shanghai stores and other creditors. Yu and Cheng then divided the profit from the fraud.

The conspiracy of Yu and Cheng was crafted deliberately, as the account books of YXS and the two stores of Cheng showed YXS's indebtedness to Cheng. As there was no priority of liability before the announced bankruptcy of YXS, it was fully legal to appropriate the funds from reselling the timber purchased from Shanghai in order to repay the "debt" to Cheng instead of paying the Shanghai stores immediately. When YXS's bankruptcy was announced, it had little left to compensate its creditors. Although Kaitai and Yin Ji won the lawsuit against Yu Pingfu and Yu Yaoqing in court, Cheng Jinjian was let off due to a lack of evidence. The judgment that Yu Pingfu should pay the two stores in full was difficult to enforce because according to the books Yu Pingfu and his nephew were legally

insolvent. In the end, the only real punishment meted out to Yu and Cheng was the disclosure of their fraud conspiracy by the timber trade guilds and chambers of commerce in all three cities, and the proclamation that no member should ever trade with them in the future.

That Yu and Cheng chose to do what they did despite their full awareness of the punishments shows that the effectiveness of reputation mechanisms had a limit. The ultimate limit is at the point where the potential gain from cheating could offset the present value of all the possible profit that one could make by trading with Shanghai timber firms in the future. The same could be said about the limit to the effectiveness of the court system.

However, the YXS case also illustrates another aspect of “limit” – that the limit of each individual institution of enforcement was extended by their communication and collaboration. Vertical communications, from timber trade guilds to the chambers of commerce to the court system, strengthened the continuity from informal norms of business practices to semi-formal regulations of commercial organizations to formal court adjudications. Horizontal communications, mainly through the chambers of commerce and sometimes trade guilds in different localities, further strengthened the capability of informal institutions to respond promptly to cross-regional cases. Of course, this coordinated system still reached its limit in a case like YXS, but its capacity for success was undoubtedly greater than if each institution worked separately. Cases like that of YXS were rare enough that the Shanghai timber trade continued to flourish based on credit. What was significant was the continuity of the formal and informal systems of enforcement and the ease with which merchants navigated between the two.

CONCLUSION

The findings of this study shed new light on the issue of the *substitutability* and *complementarity* of formal and informal institutions in the Chinese context. R. Bin Wong has suggested a contrast between early modern China and Europe in this respect. In early modern Europe, there was a clear distinction between what was formal and what was informal, and the tendency was to shift from informal to more formal mechanisms of enforcement. The institutions constructed in late imperial China fit less comfortably into the binary contrast of formal and informal institutions; rather, they spanned a continuum between the two.⁸¹ Merchant guilds and the court system constituted a complementary institution of payment enforcement. The continuum from informal to more formal mechanisms was further enhanced by the network of chambers of commerce since the first decade of the twentieth century, which facilitated vertical inter-institutional communication as well as horizontal cross-regional dispute resolution.

Moreover, although the distinctions between formal and informal institutions can be sharply drawn in theory, it is much more difficult to draw the line in historical experience. While merchant guilds are usually identified as “informal” institutions in Chinese historiography, we have seen in this article that these organizations could stipulate particular actions to be taken under specific conditions, a feature generally associated with more

81 Wong 2002.

formal mechanisms. On the other hand, the “formal” court system, especially before the 1900s, had few explicit topic-specific rules for commercial activities, but encouraged and recognized the open-ended settlement that was generated from the social forums of mediation. In the Republican era, modernization efforts in the legal realm proclaimed new formal mechanisms that were meant to demarcate more clearly the spaces of legal vis-à-vis customary relationships and induce a “formalization” process. However, the introduced sense of *substitutability* did not drive out the persistence of the earlier logic of *complementarity* between formal and informal mechanisms. Therefore, the twentieth-century scenario played out under the mutual influence of introduced Western legal practices and the continuity of indigenous perceptions. From a comparative perspective, the historical experience found in this study, that formal and informal institutions could complement each other, serves to broaden the empirical basis for economic and social theories, which have been drawn almost exclusively from the European and American trajectory of increasing demarcation and the substitution of the informal by the formal.

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