That famous Philosopher Xenophon, extolling the Persian Lawes, testified that their Citizens from their infancy, were educated and taught not to attempt, or almost to imagine any thing but honest and just. Which was the cause, as Gellius reporteth, that Draco a Citizen of Athens made their lawes so strict and euere, that it was said They were written with Blood, and not with Ink: whereas on the other side the Law made by Solon was compared to a spiders web, which taketh the lesser flies and suffereth the greater to escape and to break the same. So that (euerie extreme being vicious) Reason requireth a Law not too cruel in her Frownes, nor too partial in her Favors. Neither of these defects are incident to the Law-Merchant, because the same doth properly consist of the Custom of Merchants in the course of Trafficke, and is approoued by all Nations, according to the definition of Cicero, Vera Lex e? recta Ratio, Natura congruens, diffu?a in Omnes, Con?tans, Semipeterna: True Law, is a right reason of nature agreeing therewith in all points, diffu?ed and spread in all Nations consisting perpetually, whereby Meum and Tuum is dis?tinguished and distributed by Number, Weight and Measure, which shall be made apparent. For the maintenance of Trafficke and Commerce is so pleasant, amiable and acceptable vnto all Princes and Potentates, that Kings have beene and at this day are, of the Societie of Merchants: And many times (notwithstanding their particular differences and quarrels) they doe neuerthelesse agree in this course of Trade, because riches is the bright Starre, who e hight Trafficke takes to direct it selfe by, whereby Kingdomes and Commonweales doe flouri?h, Merchants being the meanes and instruments to performe the same, to the Glorie, Illustration, and Benefit of their Monarchies and States. Que?tionlesse, therefore, the State of a Merchant is of great dignity and to bee cheri?shed; for by them Countrieys are di?covered, Familiaritie betweene Nations is procured, and politicke Experience is attained. Whereupon I have been moued (by long ob?ervation) to put the worthines of the Customarie Law of Merchants, in plaine and compendious writing, by undoubted principles, familiar examples, and demon?trative reasons, without affectation of curious words, more than the grauitie of the Theame (in some places) did require.
I have intituled the Booke, according to the ancient name of Lex Mercatoria, and not Ius Mercatorum; because it is a Customary Law approved by the authoritie of all Kingdomes and Commonweales, and not a Law established by the Soueraintie of any Prince, either in the first foundation or by continuance of time. And beginning with Time, Number, Weight and Measure, I doe descend to the three Essential Parts of Trafficke, divided into three parts accordingly, by comparing them to the Bodie, Soule, and Spirit of Commerce, namely, Commodities, Money, and Exchange for money by Billes of Exchanges. The first, as the Bodie, upheld the World by Commutation and Bartring of Commodities, until money was devised to be coined. The second, as the Soule in the Bodie, did influence Trafficke, by the means of Equality and Equitie preventing advantage betweene Buyers and Sellers. The third, as the Spirit and Facultie of the Soule, (being treated ever where) corroborateth the Vital Spirit of Trafficke, directing and controlling (by just proportions) the prices and values of Commodities and Moneys. For euen as Merchants are the Instrumentall Cause of Trade; euen so is the Exchange for Moneys, the Efficient Cause with us in the course of Trafficke, and become Predominant or ouerring the price of Commodities and Moneys, as aforeaid. This is manifested by three Paradoxes alluding to the third Essential Parts of Commerce, which (for a Corollarie) I have added in the latter end of this Booke, with such other worthy observations as in the first Chapter are declared. And euen as the roundness of the Globe of the World is composed of the Earth and Waters: So is the Bodie of Lex Mercatoria, made and framed of the Merchantes Cuutomes, and the Sea-Lawes, which are involved together as the Seas and Earth. In the decription whereof, I have made to make repetition of the Materiall points, according as occasion did minister to me for to make application thereof, for the better understanding of the Ludicrous Reader, which is the maine Scope that all Writers are to regard and care for. The means whereby the differences and controversie happening betweene Merchants in the course of Trade are ended, is al?o declared, which most of all require Breuetic and Expedition, and had need of a peremptorie proceeding, as was invented for the Common Law of the Realme of England, the due commendation whereof is added herunto; shewing al?o how of the same there might bee made an Art or Science, and what observation of other Lawes are concurring with ours, both in the strictne?se of Law, and the lenite of Equitie, most consonant with the Law-Merchant, the knowledge whereof is of so great concern, that without it all Temporall Lawes are not compleat, but imperfect. The Scope of all therefore is, That the Rule of Equitie and Equitie may take place betweene Vs and other Nations, which Velut Ariadne cæca regens filio veitigia, non modo nos errare non sinit, sed etiam efficit, vt aberrantes in rectam viam deducamur, as hath been mentioned in our last Treatise of the maintenance of free trade, lately published. Concluding (gentle Reader) upon all the premises handled (as I hope) substantially, I commend and submit the same to the loving entertainment of the profound and discerning judgement of the discreet, wise, and experienced; wi?thing that (like matter ?et downe by the Penne of Apollo) they may ?ound ?weetly in your apprehention, and glue to your conceit mo?t harmonious Mus?e; Pleasure and Delight. London the 25 of November 1622.

Thine to v?e alwaies readie,

GERARD MALYNES.

[...]

AN INDUCTION TO LEX MERCATORIA, OR THE LAW MERCHANT, AND THE ANTIQUITIE THEREOF.

CHAP. I

When Almighty God had created man, good and a sociable creature, who could not o well live alone, as other creatures sufficiently profused (by nature) for their sustenance, and had rea?on assigned and given unto him, above all the said creatures: yet all the means and faculties of his bodie and soule, were not sufficient to make him happy while? he was alone. But nece?ssarie it did require a concur?ence of men helping one another to supply (with a common strength) the said weakene??se; for the burden of the said nece?ssarie was so weightie and great, that one man alone was not able to manage the said. Then it came to pass, that by mutuall contribution of offices, euerie man did afford means according to his ability for the common good, so that tho?e which were of a strong bodie did employe their labour to get living and maintenance for them?elues and others: And tho?e which were endued with the be?t part of the soule, as Vnder?standing
and Rea?on, did vndertake the mo?t important matters, teaching men how to liue well, and informing them of their felicitie (which they judged chiefly to con?ii?t in virtuous actions) endeaouering to make impre?tion in the ?oule of man, of certaine good lawes for the ob?eruation thereof, with a reference of them to the fir?t law engraffed in the ?oule of man, as a part of that diuine light, which was infused in him to know (in ?ome mea?ure of perfection) the good and euil, and accordingly to receive reward of puni?ment.

As for the other and better part of informing and guiding the thoughts and affections of men to a ?upermaturall end, that, as ?urpa??ing the compa?e of that lower ?pheare wherein I now moue, mu?t be left untouched by me, who here take for my object not the ?pirituall but the ciuill life of man and the meanes thereto conducting.

Touching therefore the externall part. The mutuall contribution of offices among?t men hath from the beginning continued both in labouring and manuring the natural riches of the lands in come and pa?turage, as in the immediate children of our fir?t father Adam, and in planting Vines, and making an extract of the iuyce of the fruit of them, as Noah. Which riches in matter and foundation natural, and partly al?o in alteration and managing artificially, euery po?e??e?or not long after the beginning of the world ?euerally inioyed in propertie: and hence did proceed a commerce, fir?t, in reall entechange and communication of things of the ?ame or other kinds, but all naturall commodities, as ?heepe for ?heepe, ?heepe for come, wine for yole, &c. between man and man, or nations and nations, according to number, weight, and mea?ure, and after, to auid confu?ion, by a commune pignus currant mutual, which we call money, both by way of merchandizing, the mo?t ancient evidence hereof is Abrahams purcha?ing for money a field for buriall. The ob?eruation and cu?tomes whereof, was the beginning of the Law-Merchant, and that e?pecially when mankind was propagated into an infinite number, and the dome?i?ques or neere hand commodities were not ?ufficient for their ?u?tenance in ?ome countries, and in other countries were ouver aboundant: Then of nece??itie followed the v?e of tru?ting, exchanging, and trading; fir?t, on the Land in the maine Continent, and then exten?iuely upon the Seas, both for fi?hing and negotiation. Then did merchants trauell from countrye to countrye: So in the dayes of the Patriarke Jacob, did the merchants Medianits in their journey mete with the children of Iacob, and then lo?eph was carried ther and all his family. And then it was and proued to be: from God:) or tho?e of Crete, Cybaris, Sparta, & Carthage, by Charondas, Lycurgus, (who?e Lawes were vniformely made by Mo?es from God:) or tho?e of Crete, Cybaris, Sparta, & Carthage, by Minos, Charondas, Lycurgus, and Phalcas. Neuerthele??e, many Emperours and Kings haue alwaies referred the ending of differences, which happen betweene Merchants, to be done & decided according to the Law-Merchant, That is to ?ay, according to the Cu?tome of Merchants, who by their trauels found the diuer?ie of weights and mea?ures, and the goodne??e and v?e of commodities pleas?ing to all nations, whereby the ?uperfluities of them were vntoished among?t them. Vt quod v?piam na?citur boni, id apud omnes affluat.

This Law of Merchants, or Lex Mercatoria, in the fundamentals of it, is nothing el?e but (as Cicero difneth true and iu?i Law) Recta Ratio, natura congruens, diffu?a in omnes, Con?trans ?empiterna: True Law is right Rea?on, agreeable to Nature in all the points, diffu?ed and ?pread in all Nations, con?i?ting perpetually without abrogation: howbeit ?ome doe attribute this definition vnto ius gentium, or the Lawes of Nations, which con?i?t eth of Cu?tomes, Manners, and pre?creptions of all Nations, being of like conditions to all people, and ob?erued by them as a law: But the matter truly being examined, we ?hall find it more naturally and properly belongeth to the Law-merchant.


Princes and Potentates by their prerogatuiues (re?pecting the law of Nations) doe permit among?t them?elues a free travelling by land through their ?euerall Kingdomes, Territories, and Dominions, vnle?e they bee open enemies: They hold likewise a communitye of the ?eas for Navigaition, as al?o a di?i?ct dominion of the ?eas adioying to the territories and iuri?dictions of their countries, they take Cu?tome, Sub?i?es, and all manner of impo?itions vpon the commodities imported and exported out of their Habours, Hauens, and Ports, as al?o duties for the fi?hing in their Seas, Streams, and Dominions; of all which the Merchant is to take e?peciall notice, to avoid danger in the trafficke and trade with their ?ubjects, for non-payment of the ?ame, which they clai?e iure gentium.

Are not the Sea Lawes e?tabl?hed to decide the controver?ies and differences happening betweene Merchants and
Marriners? And is it not convenient for Merchants to know them? Consider ing that Merchants maintaine the Fisher-men, and (by way of Trade) cause the Sea and Land Commodities to be dispersed everywhere? So that the said prerogatives do all appertain to the Law-merchant as properly inherent unto commerce, and the observation of Merchants being of like condition to all people and nations.

Concerning manners and prescriptions, wherein the differences is to be noted from the Law-Merchant; the same consists in the erecting of Offices, creating of Officers, and making of Laws, which of themselves make a separation between Customs: Also the giving or bestowing of honours and dignities, the granting of privileges, and the doing of any thing which concerneth the Honor, Body, and goods [...]