That famous Philosopher Xenophon, extolling the Perian Lawes, testified that their Citizens from their infancy, were educated and taught not to attempt, or almost to imagine any thing but honest and useful. 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 Inke: whereas on the other side the Lawe 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 (every extreme being vicious) Reason requireth a Lawe not too cruel in her Frownes, nor too partial in her Favours. 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 approved by all Nations, according to the definition of Cicero, Vera Lex est recta Ratio, Natura congruens, diffusa in Omnes, Contans, Sempiterna: True Law, is a right reason of nature agreeing therewith in all points, diffus'd and spread in all Nations consisting perpetually, whereby Meum and Tuum is distinguished 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 unto 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 neuterethelie agree in this course of Trade, because riches is the bright Starre, who hight Trafficke takes to direct it selfe by, whereby Kingdomes and Commonweales doe flourishe, Merchants being the meanes and instruments to performe the same, to the Glorie, and Benefit of their Monarchies and States. Que?tionelie, the State of a Merchant is of great dignity and to bee cherished; for by them Countrieys are covered, Familiaritie betwenee Nations is procured, and politike Experience is attained. Whereupon I have been mooved (by long observation) to put the worthines of the Customarie Law of Merchants, in plain 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; becau?e it is a Customary Law approved by the authoritie of all Kingdomes and Commonweales, and not a Law e?tabli?hed by the Soueraigntie of any Prince, either in the first foundation or by continuance of time. And beginning with Time, Number, Weight and Mea?ure, I doe de?cend to the three E??entiall Parts of Traffike, diuided into three parts accordingly, by comparing them to the Bodie, Soule, and Spirit of Commerce, namely, Commodities, Money, and Exchange for money by Bills of Exchanges. The first, as the Bodie, vpheld the World by Commutation and Bartring of Commodities, vntill money was deui?ed to bee coyned. The ?econd, as the Soule in the Bodie, did infu?e life to Traffike, by the meanes of Equalitie and Equitie preuentuing advantage betweene Buyers and Sellers. The third, as the Spirit and Facultie of the Soule, (being ?eated euerie where) corroborateth the Vitall Spirit of Traffike, directing and controlling (by iust proportions) the prices and values of Commodities and Moneys. For eu en as Merchants are the In?trumentall Cau?e of Trade; eu en ?o is the Exchange for Moneys, the Efficient Cau?e with vs in the cour?e of Traffike, and become Predominant or ouerruling the price of Commodities and Moneys, as afore?aid. This is manife?ted by three Paradoxes alluding to the ?aid three E??entiall Parts of Commerce, which (for a Corrollarie) I haue added in the latter end of this Booke, with ?uch other worthy ob?eruations as in the fir?t Chapter are declared. And eu en as the roundne??e of the Globe of the World is compo?ed of the Earth and Waters: So is the Bodie of Lex Mercatoria, made and framed of the Merchants Cu?tomes, and the Sea-Lawes, which are involved together as the Seas and Earth. In the de?cription whereof, I haue v?ed to make repetition of the Materiall points, according as occa?ion did mini?ter vnsto me for to make application thereof, for the better vnder?standing of the tedious Reader, which is the maine Scope that all Writers are to regard and care for. The meanes whereby the differences and contro?ries happening betweene Merchants in the cour?e of Trade are ended, is al?o declared, which mo?t of all require Breuitie and Expedition, and had need of a peremptorie proceeding, as was inuented for the Common Law of the Realme of England, the due commendation whereof is added beereunto; shewing al?o how of the ?ame there might bee made an Art or Science, and what ob?eruation of other Lawes are concurring with ours, both in the ?trictne??e of Law, and the lenitie of Equitie, most con?onant with the Law-Merchant, the knowledge whereof is of ?o great con?quence, that without it all Temporall Lawes are not compleat, but imperfect. The Scope of all therefore is, That the Rule of Equalitie and Equitie may take place betweene Vs and other Nations, which Velut Ariadnæ cæca regens filo ve?tigia, non modo nos errare non sinit, ?ed etiam efficit, vt aberrantes in rectam viam deducamur, as hath beene mentioned in our la?t Treati?e of the maintenance of free trade, lately publi?hed. Concluding (gentle Reader) vnpon all the premi??es handled (as I hope) ?ubstantially, I commend and ?ubmit the ?ame to the louing entertainement of the profound and di?cerning iudgement of the di?creet, wi?e, and experienced; wi?hing 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 Mu?icke; Plea?ure and Delight. London the 25 of Nouember 1622.

Thine to v?e alwaies readie,

GERARD MALYNES.

[...]

AN INDVCTION TO LEX MERCATORIA, OR THE LAW MERCHANT, AND THE ANTIQVITIE THEREOF.

CHAP. I

When Almighty God had created man, good and a ?ociable creature, who could not ?o well liue alone, as other creatures ?ufficiently prouided (by nature) for their ?u?tenance, and had rea?on a??igned and giuen vnsto him, aboue all the ?aid creatures: yet all the meanes and faculties of his bodie and ?oule, were not ?ufficient to make him happie while?t he was alone. But nece??i?tie did require a concour?e of men helping one another to ?upplie (with a common ?trength) the ?aid weakene??e; for the burden of the ?aid nece??i?tie was ?o weightie and great, that one man alone was not able to manage the ?ame. Then it came to pa??e, that by mutuall contribution of offices, euerie man did affoord means according to his abilitie for the common good, ?o that tho?e which were of a ?trong bodie did emploie their labour to get liuing and maintenance for them?elues and others: And tho?e which were endued with the be?ti? part of the ?oule, as Vnder?standing
and Rea?on, did vndertake the mo?t important matters, teaching men how to liue well, and informing them of their feliciti
(which they judged chiefly to con?it in vertuous actions) endeuouring 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 infu?ed in him to know (in ?ome mea?ure of perfection) the good and euill, and

accordingly to receiue reward of puni?tement.

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 vntouched by me, who here take for

my object not the ?piritual but the cuuill life of man and the meanes thereto conducing.

Touching therefore the externall part. The mutuall contribution of offices among?t men hath from the beginning continued

both in labouring and manuring the naturlall 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 iuycie of the fruit of them, as Noah. Which riches in

matter and foundation naturlall, and partly al?o in alteration and managing artificially, euery po????f?r not long after the

beginning of the world ?euerally inioyed in propertie: and hence did proceed a commerce, fir?t, in reall enderchange and

communication of things of the ?ame or other kinds, but all naturlall commodities, as ?heepe for ?heepe, ?heepe for come,

wine for yle, &c. between man and man, or nations and nations, according to number, weight, and mea?ure, and after, to

auoid confu?ion, by a commune pignus currant mutuall, 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 et?pecially when mankind was propagated into an infinite number, and

the dome?ti?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?iusly vpon the Seas, both for fi?hing and negotiation. Then did merchants

traulle from countrye to countrye: So in the dayes of the Patriarke Iacob, did the merchants Medianits in their journey

meete with the children of Iacob, and then lo??ph was carried ther with all his family. And then it was and proued to be

true, (which experience hath confirmed) that Vita civilis in ?ocietate po?ita e?t, ?ocietas autem in imperio & commercio:

So that in plainly appeareth, that the Law Merchant, may well be as ancient as any humane Law, and more ancient than

any written Law. The very morall Law it ?e, as which hath ?o continued and beene daily augmented ?uce??ei?uely vpon new

occa?ions, and was not altogether made in the fir?t foundation, as the Lawes whereby the Common-weetales of Irael

(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??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 traulles found the diuer?tie of weights and mea?ures, and the

goodnees & v?e of commodities plea?ing to all nations, whereby the ?uperflui?ties of them were vented 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 difieth true


howbeit ?ome doe attribute this definition vnto ius gentium, or the Lawes of Nations, which con?i?i tether 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 being truly examin’d, we ?hall find it more naturally and properly belongeth to the

Law-merchant.

Every man knwoeth, that for Manners and Pre?creptions, there is great diuer?tie among?t all Nations: but for the

Cu?tomes ob?erued in the cour?e of traffick and commerce, there is that ?ympathy, concordance, and agreement, which

may bee ?aid to bee of like condition to all people, and diffu?ed and ?pread by right rea?on, and in?tinct of nature con?i?i

perpetually. And the?e Cu?tomes are properly tho?e ob?eruations which Merchants maintaine betwene them?e, and if the?e bee ?eparated from the Law of Nations, the remainder of the ?aid Law will con?i?i but of few points.

Princes and Potentates by their prerogatuiues (re?pecting the law of Nations) doe permit among?t them?e a free

travelling by land through their ?euerall Kingdomes, Territories, and Dominions, vnle??e they bee open enemies: They

hold liken??e a community of the ?eas for Nauigation, as al?o a di?i?nt dominion of the ?eas adiaying to the territories

and iuri?diction of their countries, they take Cu?tome, Sub?dies, 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, Streames, and

Dominions; of all which the Merchant is to take e?peciall notice, to auoid danger in the traffickke and trade with their

?ubiects, for non-payment of the ?ame, which they claimie iure gentium.

Are not the Sea Lawes e?tabli?hed to decide the controuer?ies and differences happening betwenee Merchants and
Marriners? And is it not conuenient for Merchants to know them? Consider that Merchants maintaine the Fishermen, 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 them selves make a separation between Customs: Also the giving or beaying of honours and dignities, the granting of privileges, and the doing of any thing which concerneth the Honor, Body, and goods [...]