That famous Philosopher Xenophon, extolling the Periian Lawes, testified that their Citizens from their infancie, 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 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 the 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, Sempiterna: True Law, is a right reason of nature agreeing therewith in all points, diffusa 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 quarrells) they doe neuerthelesse agree in this course of Trade, because riches is the bright Starre, whoe 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, 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 Countreys are di?ouvered, Familiarity betweene Nations is procured, and politike Experience is attained. Whereupon I have been moued (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 gruitie 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 establihed by the Soueraignty 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 Essentiall Parts of Traffike, divided 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, upheld the World by Commutation and Bartring of Commodities, vntill money was deuied to bee coyned. The second, as the Soule in the Bodie, did influe life to Traffike, by the meanes of Equalitie and Equitie preventing advantage betweene Buyers and Sellers. The third, as the Spirit and Facultie of the Soule, (being tested euerie where) corroborateth the Vitall Spirit of Traffike, directing and controlling (by just proportions) the prices and values of Commodities and Moneys. For euen as Merchants are the Instrumentall Cauze of Trade; euen so is the Exchange for Moneys, the Efficient Cause with vs in the course of Traffike, and become Predominant or ouerring the price of Commodities and Moneys, as aforeaid. This is manifesteed by three Paradoxes alluding to the three Essentiall Parts of Commerce, which (for a Corrollarie) I haue added in the latter end of this Booke, with such other worthy obseruations 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 Merchants Cu?tomes, and the Sea-Lawes, which are involved together as the Seas and Earth. In the description whereof, I haue vned to make repetition of the Materiall points, according as occaion did miniter vnto me for to make application thereof, for the better understanding of the Iudicious Reader, which is the maine Scope that all Writers are to regard and care for. The meanes whereby the differences and controversties happening betweene Merchants in the course of Traffike are ended, is al?so declared, which m?ot 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; showing al?so how of the same there might bee made an Art or Science, and what ob?ervation of other Lawes are concurring with ours, both in the trictne?se of Law, and the lenitie of Equitie, most con?onant with the Law-Merchant, the knowledge whereof is of so great con?quence, that without it all Temporal 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?itia, non modo nos errare non sinit, ëd etiam efficit, vt aberrantes in rectam viam deducamur, as hath beene mentioned in our la?e Treatise of the maintenance of free trade, lately publihed. Concluding (gentle Reader) vpon all the premisses handled (as I hope) ub?tainently, I commend and submit the same to the louing entertainment of the profound and discerning judgement of the di?rect, wi?e, and experienced; wi?thing that (like matter ?et downe by the Penne of Apollo) they may ?ound ?weetly in your apprehension, 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 INDUCTION TO LEX MERCATORIA, OR THE LAW MERCHANT, AND THE ANTIQVITIE THEREOF.

CHAP. I

When Almightie God had created man, good and a sociable creature, who could not so well liue alone, as other creatures sufficiently provided (by nature) for their sustenance, and had rea?on assigned and giuen vnto him, aboue all the a?id creatures: yet all the meanes and faculties of his bodie and soule, were not ?ufficient to make him Happie while?t he was alone. But nece??irie did require a concour??e of men helping one another to upplie (with a common strengthe) the ?aid weakene??e; for the burden of the ?aid nece??e 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; hewing al?o how of the ?ame there might bee made an Art or Science, and what obervation of other Lawes are concurring with ours, both in the trictne?se of Law, and the lenitie of Equitie, most con?onant with the Law-Merchant, the knowledge whereof is of so great con?quence, that without it all Temporal 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?itia, non modo nos errare non sinit, ëd etiam efficit, vt aberrantes in rectam viam deducamur, as hath beene mentioned in our last Treatise of the maintenance of free trade, lately publihed. Concluding (gentle Reader) vpon all the premisses handled (as I hope) ub?tainently, I commend and submit the ?ame to the louing entertainment of the profound and discerning judgement of the di?rect, wi?e, and experienced; wi?thing that (like matter ?et downe by the Penne of Apollo) they may ?ound ?weetly in your apprehension, 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,
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?i?t in vertuous actions) endeauouring 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 engrafted 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?nement.

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 ciuill 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 naturall 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, evey po??e??or not long after the beginning of the world?euerally inioyed in propertie: and hence did proceed a commerce, fir?t, in reall enterechange and communication of things of the ?ame or other kinds, but all naturall commodities, as ?heepe for ?heepe, ?heepe for come, wine for oyle, &c. between man and man, or nations and nations, according to number, weight, and mea?ure, and after, to avoide 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 buriaul. 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 abundant: 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?iely vpon the Seas, both for fi?hing and negotiation. Then did merchants trauell from countrey to countrey: So in the days of the Patriarke iacob, did the merchants Mediainits in their journey meete with the children of iacob, and then lo?eph 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, ?ocietias 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 ?elfe, as which hath ?o continued and beene daily augmented ?uccesiuely vpon new occa?ions, and was not altogether made in the fir?t foundation, as the Lawes whereby the Common-wealthes of ?rael (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. So that the?e many Emperours and Kings haue alwaies referred the ending of differences, which happen between 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?tie of weights and mea?ures, and the goodne??e and v?e of commodities plea?ing to all nations, whereby the ?uperfluities of them were vented among?t them. Vt quod v?piam na?citur boni, id apud omnes afflavit.

This Law of Merchants, or Lex Mercatoria, in the fundamentals of it, is nothing el?e but (as Cicero dифneth true and ia?litu 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 Law of Nations, which con?i?teth 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 trauersed, we ?shall find it more naturally and properly belongeth to the Law-merchant.


Princes and Potentates by their prerogatiiues (re?pecting the law of Nations) doe permit among?t them?elues a free travelling by land through their ?ueveral Kingdomes, Territories, and Dominions, vnle?e they bee open enemies: They hold likewi?e a communitie of the ?eas for Nauigation, as al?o a di?tinct dominion of the ?eas adioyning to the territories and iur?i?ction of their countries, they take Cu?tome, Sub?i?ies, 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 avoide danger in the trafficke and trade with their ?ubiects, for non-payment of the ?ame, which they cliame iure gentium.

Are not the Sea Lawes e?tabl?hed to decide the controuer?ies and differences happening betweene Merchants and
Marriners? And is it not conuenient for Merchants to know them? Con?idering that Merchants maintaine the Fi?her-men, and (by way of Trade) cau?e the Sea and Land Commodities to bee di?per?ed euerie where? So that the ?aid prerogatives doe al?o appertaine to the Law-merchant as properly inherent vtnto commerce, and the ob?eruation of Merchants being of like condition to all people and nations.

Concerning manners and pre?cripions, wherein the differences is to be noted from the Law-Merchant; the ?ame con?i?t in the erecting of Offices, creating of Officers, and making of Lawes, which of them?elues make a ?eperation betweene Cu?tomes: Al?o the giuing or be?towing of honours and dignities, the granting of priuiledges, and the doing of any thing which concerneth the Honor, Body, and goods […]