That famous Philosopher Xenophon, extolling the Persian Laws, testified that their Citizens from their infancy, were educated and taught not to attempt, or almost to imagine anything but honest and useful. Which was the cause, as Gellius reporteth, that Draco a Citizen of Athens made their laws so strict and severe, 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 (every extreme being vicious) Reason requireth a Law not too cruel in her Frowns, 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 Trade, and is approved by all Nations, according to the definition of Cicero, Vera Lex e 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 Society of Merchants: And many times (notwithstanding their particular differences and quarrels) they doe agree in this course of Trade, because riches is the bright Starre, who?e height Traffick takes to direct it self by, whereby Kingdomes and Commonweales doe flouris?h, Merchants being the meanes and instruments to performe the same, to the Glory, Illustration, and Benefit of their Monarchies and States. Que?tionable??e, therefore, the State of a Merchant is of great dignity and to bee cheri?hed; for by them Countrieys are discovered, Familiarity betweene Nations is procured, and polite 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 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?tabl?hed by the Soueraignty 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 Billes 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 means of Equalitie and Equitie preuenting advantage beetweene 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 euen as Merchants are the In?trumentall Cau?e of Trade; euen ?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?aaid. This is manife?ted by three Paradoxes alluding to the ?aiy 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 euen 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 involued 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 vn to me for to make application thereof, for the better vn?der?standing of the Iudicious Reader, which is the maine Scope that all Writers are to regard and care for. The meane whereby the differences and controver?ies happening beetweene 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?equence, 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 beetweene 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) vpon all the premi??e handled (as I hope) ?ub?tantly, I commend and ?ubmit the ?ame to the louing entertainment of the profound and di?cerning judgement of the di?creet, wi?e, 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 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 vn to 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??itie 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??itie 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 afford 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?t 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 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 engraffed in the ?oule of man, as a part of that divine 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?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?ie of things, and in planting Vines, and making an extract of the iuyce of the fruit of them, as from God:) or tho?e of Crete, Cybaris, Sparta, & Carthage, by ?e?ing and then ?e?ing. Neuerthe?e??e, many Emperours and Kings haue alwaies referred the ending of the worlde to the ?oule of Man, did the merchants Medianits in their iourney . . .


Every man knwoeth, that for Manners and Pre?creptions, there is great diuer?tie among?t all Nations: but for the Cu?tomes of Merchants, who by their travell 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. Every man knwoeth, that for Manners and Pre?creptions, there is great diuer?tie among?t all Nations: but for the Cu?tomes of Merchants, who by their travell 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. This Law of Merchants, or Lex Mercatoria, in the fundamentals of it, is nothing el?e but (as Cicero d?feth true and in?u?ent) Recta Ratio, natura congruen, diffu?a in omnes, Con?tans ?empiterna: True Law is right Rea?on, agreeable to Nature in all the points, diffu?ed and ?pred in all Nations, con?i?it perpetually without abrogation: howbeit ?ome doe attribute this de?nition vnto ius gentium, or the Law of Nations, which con?i?it of the Cu?tomes of Merchants, who by their travell 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?itur boni, id apud omnes afituat.


The mutuall contribuition 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 naturall, 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 enterchange and communication of things of the ?ame or other kinds, but all naturall commodities, as ?heep for ?heep, wine for oyle, &c. between man and man, or nations and nations, according to number, weight, and mea?ure, and after, to avoid 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 e?pecially when mankind was propagated into an infinite number, and the dome?iques 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?u?ly vpon the Seas, both for fi?hing and negotiation. Then did merchants trauell from countrye to countrye: So in the daies of the Patriarke Iacob, did the merchants Medianits in their journey meete with the children of Iacob, and then lo?eph was carried ther and all his family. And then it was and proued to be true, (which experience hath confirmed) that Vita civilis in ?ocietate po?ita e?it, ?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 ?efle, 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-eweales of I?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. Neuerthe?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 travells 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?itur boni, id apud omnes afituat.

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Princes and Potentates by their prerogatiues (re?pecting the law of Nations) doe permit among?t them el?es a free travellling by land through their ?ueal 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 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 avoid danger in the trafficke and trade with their ?ubjects, for non-payment of the ?ame, which they claime iure gentium.

Are not the Sea Lawes e?tabli?hed to decide the contro?iues 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 vnto 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 [...]

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