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 any thing but honest and innocent. 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 spider's web, which taketh the lesser flies and suffereth the greater to escape and to break the same. So that (euen extreme being vicious) Reason requireth a Law not too cruel in her Frowns, 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 Trade, and is approved by all Nations, according to the definition of Cicero, Vera Lex e?recta Ratio, Natura congruens, diffusa in Omnes, Contans, 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 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 neuerthelesse agree in this course of Trade, because riches is the bright Starre, who high Traffick takes to direct it selfe by, whereby Kingdomes and Commonweales doe flourish, Merchants being the meanes and instruments to performe the same, to the Glorie, and Benefit of their Monarchies and States. Que?tionlesse, therefore, the State of a Merchant is of great dignity and to bee cherished; for by them Countries are covered, Familiaritie betweene Nations is procured, and politike Experience is attained. Whereupon I have beene 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; because it is a Customary Law approved by the authoritie of all Kingdomes and Commonweales, and not a Law established 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 Essential 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, upheld the World by Commutation and Bartring of Commodities, vntill money was deuided to be coined. The second, as the Soule in the Bodie, did infuse life to Traffike, by the meane of Equality and Equitie preuenting advantage betweene Buyers and Sellers. The third, as the Spirit and Facultie of the Soule, (being feeded everie where) corroborateth the Vital Spirit of Traffike, directing and controlling (by just proportions) the prices and values of Commodities and Moneys. For even as Merchants are the Instrumentall Cause of Trade; even is the Exchange for Moneys, the Efficient Cause with vs in the course of Traffike, and become Predominant or ouerruling the price of Commodities and Moneys, as aforeaid. This is manifested by three Paradoxes alluding to the three Essential Parts of Commerce, which (for a Corollarie) I haue added in the latter end of this Booke, with such other worthy obseruations as in the first Chapter are declared. And even 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 Customs, 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 Material points, according as occasion did minister to me for to make application thereof, for the better understanding of the Lividous Reader, which is the maine Scope that all Writers are to regard and care for. The meane whereby the differences and controversiees happening betweene Merchants in the course of Trade are ended, is al! declared, which more of all require Breuitie and Expedition, and had need of a peremptorie proceeding, as was inuented for the Common Lawe of the Realme of England, the due commendation whereof is added herunto; shewing al! how of the same might bee made an Art or Science, and what observation of other Lawes are concurring with ours, both in the strictne?e of Law, and the lenity of Equitie, most consonant with the Law-Merchant, the knowledge whereof is of so great con?quence, 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 Ariadnæ cæca regens filo ve?tigia, non modo nos errare non sinit, sed etiam efficat, vt aberrantes in rectam viam deducamur, as hath beene mentioned in our last Treatie of the maintenance of free trade, lately published. Concluding (gentle Reader) upon all the premises handled (as I hope) ub?tantly, I commend and submit the same to the louing entertainment of the profound and discerning 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 November 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 Almighty God had created man, good and a sociable creature, who could not so well live alone, as other creatures sufficiently provied (by nature) for their sustenance, and had rea?on assigned and giuen vnto him, aboue all the said creatures: yet all the means and faculties of his bodie and soule, were not sufficient to make him happy while?t he was alone. But nece??itie did require a concoure of men helping one another to suppleie (with a common strength) the aid weakened;e; for the burden of the aid nece??itie was so weightie and great, that one man alone was not able to manage the same. Then it came to pa??e, that by mutual contribution of offices, euerie man did afford means according to his abilitie for the common good, so that tho?e which were of a strong bodie did employe their labour to get liuing and maintenance for them?elues and others: And tho?e which were endued with the be?? part of the soule, as Vnder?standing
and Rea\textsuperscript{?}on, did vndertake the mo\textsuperscript{?}t important matters, teaching men how to liue well, and informing them of their felicitie (which they judged chiefely to con?i?i?n in vertuous actions) endeauouring in the ?oule of man, of certaine good lawes for the ob?eruation thereof, with a reference of them to the fir?it law engraffed in the ?oule of man, as a part of that diuine light, which was in?u?ed in him to know (in ?ome mea?ure of perfection) the good and euill, and accordingly to receiue reward of puni?gement.

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

Touching therefore the externall part. The mutuall contribution of offices among?it 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?it 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?eueral?y injoyed in propertie: and hence did proceed a commerce, fir?it, in real? enterchange and communication of things of the ?ame or other kinds, but all naturall 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 avoid confu?ion, by a commune pignus currant mutuall, which we call money, both by way of merchandizing, the mo?it 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?tiques or neere hand commodities were not ?ufficient for their ?u?tenance in ?ome countries, and in other countries were ouer abundant: Then of nece??itie followed the v?e of tru?ting, exchanging, and trading; fir?it, 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 dayes of the Patriarke Iacob, did the merchants Medianitis 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?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 ?elfe, as which hath ?o continued and beene daily augmented ?ucce??iuely vpon new occa?ions, and was not altogether made in the fir?it foundation, as the Lawes whereby the Common-weales of ?rael (who?e Lawes were vnformely made by Mo?es from God:) or tho?e of Crete, Cybaris, Sparta, & Carthage, by Minos, Charondas, Lycurgus, and Phalcas. Neuerthel?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 trauels found the diuer?itie of weights and mea?ures, and the goodne??e and y?e of commodities plea?ing to all nations, whereby the ?uperfluities of them were vended among?it 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 dинфeth true and iu?it Law) Recta Ratio, natura congruens, diffu?a in omnes, Con?itans ?empiterna: True Law is right Rea?on, agreeable to Nature in all the points, diffu?ed and ?read 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?tith 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 truely examined, we ?hall find it more naturally and properly belongeth to the Law-merchant.


Princes and Potentates by their prerogatiuves (re?pecting the law of Nations) doe permit among?it them?e?les a free travauell by land through their ?eueral Kingdomes, Territories, and Dominions, vnle??e they bee open enemies: They hold likewi?e a communitee of the ?eas for Nauigation, as al?o a di?itinct dominion of the ?eas adjoyning to the territories and iu?i?iction 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?speciall notice, to avoid danger in the trafficke and trade with their ?ubiects, for non-payment of the ?ame, which they claime iure gentium.

Are not the Sea Lawes e?tabli?hed to decide the contro?ieries and differences happening betweene Merchants and
Marriners? And is it not convenient for Merchants to know them? Considering that Merchants maintaine the Fi?her-men, and (by way of Trade) cause 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?ervation of Merchants being of like condition to all people and nations.

Concerning manners and pre?criptions, 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 [...]