

from the Roman law, and possibly was the channel through which the Roman law chiefly affected our law.⁵

The law merchant as is pointed out by Cockburn, C.J., in *Goodwin v. Roberts* (1875), L.R. 10 Ex. 337, at p. 346 (s.c. 1 App. Cas. 476, 5 R.C. 199), is not fixed and stereotyped, but is capable of being expanded and enlarged so as to meet the wants and requirements of trade in the varying circumstances of commerce. It is neither more nor less than the usages of merchants and traders in the different departments of trade, ratified by the decisions of courts of law, which, upon such usage being proved before them, have adopted them as settled law with a view to the interests of trade and the public convenience. The court proceeded herein on the well-known principle of law that, with reference to transactions in the different departments of trade, courts of law, in giving effect to the contracts and dealings of the parties, will assume that the latter have dealt with one another on the footing of any custom or usage prevailing generally in the particular department. By this process, what before was usage only, unsanctioned by legal decision, has become engrafted upon, or incorporated into, the common law, and may thus be said to form part of it. "When a general usage has been judicially ascertained and established," says Lord Campbell in *Brundage v. Barnett* (1846), 12 Cl. & F., at p. 805, 3 R.C., at p. 606, "it becomes a part of the law merchant, which courts of justice are bound to know and recognize. Justice could not be administered if evidence were required to be given toties quoties to support such usages, and issue might be joined upon them in each particular case."

Thus when goldsmiths' or bankers' notes came into general use, Lord Mansfield and the Court of King's Bench had no difficulty in holding that the property in such notes passed by delivery on the ground that they "are treated as money, as cash, in the ordinary course and transaction of business, by the general

(5) A. T. Carter, 17 L.Q.R., at p. 240; cf. T. E. Scrutton, *Roman Law in the Law Merchant*, extract from *The Influence of the Roman Law on the Law of England*, Cambridge, 1885, reprinted in 1 *Select Essays in Anglo-American Legal History*, 1907, p. 237.