courts and merchants, as to whether the customary incidents of negotiability were to be recognized in the case of promissory notes. The dispute was settled by the statute 3 & 4 Anne, c. 9, which vindicated the custom and confirmed the negotiability of notes.[8]

The results of the formation, by custom, of the law of exchange are instructive, as pointed out by Chalmers, 7 ed., p. lxi. (Introduction to third edition):—

"A reference to Marius' treatise on Bills of Exchange, written about 1670, or Beawes' Lex Mercatoria, written about 1720, will shew that the law, or perhaps rather the practice, as to bills of exchange, was even then pretty well defined. Comparing the usage of that time with the law as it now stands, it will be seen that it has been modified in some important respects. Comparing English law with French, it will be seen that, for the most part, where they differ, French law is in strict accordance with the rules laid dow / Beawes. The fact is that when Beawes wrote, the law or practice of both nations on this subject was uniform. The French law, however, was embodied in a code by the "Ordonnance de 1673," which is amplified but substantially adopted by the Code de Commerce of 1818. Its development was thus arrested, and it remains in substance what it was 200 years ago. English law has been developed piecemeal by judicial decisions founded on custom. The result has been to work out a theory of bills widely different from the original. The English theory may be called the Banking or Currency theory, as opposed to the French or Mercantile theory. A bill of exchange in its origin was an instrument by which a trade debt, due in one place, was transferred in another. It merely avoided the necessity of transmitting cash from place to place. This theory the French law steadily keeps in view. In England bills

(8) See also W. Cranch, Promissory Notes before and after Lord Holt, reprinted in 3 Select Essays in Anglo-American Legal History, 1909, p. 72, from the appendix to the first volume of Cranch's Reports of Cases in the Supreme Court of the United States, 1804; E. Jenks, Early History of Negotiable Instruments, 9 L.Q.R. 70, 1893, reprinted in 3 Select Essays, etc., p. 51; T. A. Street, Foundations of Legal Liability, 1906, vol. 2, chapters 31 to 40.