merely positive morality, it comes immediately from the subject members of the community, by whom it was observed spontaneously, or without compulsion by the State. But as positive law, it comes immediately from the sovereign, through subordinate judges, who transmute the moral and imperfect custom into legal and perfect rules:" 2 Austin's Jurisprudence, 553 and 555. On a prior page (p. 548), he distinguishes these processes as "law established in the *legislative* manner," and "law introduced and obtaining *obliquely*," or "law established or introduced in the way of *judicial* legislation." But elsewhere he combats the use of the term "judge-made law."

But it was not without a struggle that the merchants succeeded in compelling the Judges to recognize their customs and usages. Lord Holt, C.J., was, as his reporter states, *totis viribus*, against some of the customs of merchants which he said "proceeded from obstinancy and opinionativeness." And in refusing to hold that a promissory note payable to bearer was valid or negotiable, he said: "It amounted to setting up a new specialty, unknown to the common law, and invented in Lombard street, which attempted in these matters of bills of exchange to give laws to Westminster Hall." And in another case he denounced "the noise and cry that such is the usage of Lombard street, as if a contrary opinion would blow up Lombard street:" 2 Lord Raymond's Reports, 758 and 930. The matter was finally settled by Parliament in favor of the contention of the merchants, by the Act 3 & 4 Anne, c. 9.

But the merchants ultimately became the victors in the struggle to engraft their usages and customs on the common law, mainly through the great assistance of Lord Mansfield, who has been justly styled "the founder of the commercial law of this country," (2 East 73); and judges have had to concede that the custom of merchants is now part of the common law, and that the Courts will take notice of it *ex officio*.

The results of this formation of the law by custom are instructive; for this law of trade usage and custom now controls all negotiable instruments alike, whether they are the contracts of traders or non-traders. The English usage 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 to 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 have developed into a perfectly flexible paper currency. In France, a bill represents a trade transaction; in England it is merely an instrument of credit. English law gives full play to the system of accommodation paper; French law endeavors to stamp it out. A comparison of some of the main points of divergence between English and French law will show how their two theories are worked out. In England it is no longer necessary to express on a bill that value has been given, for the law raises a presumption to that effect. In France the nature of the value must be expressed, and a false statement of value avoids the bill in the hands of all parties with notice. In England a bill may now be drawn and payable in the same place. In France the place where a bill is drawn must be so far distant from the