

authoritatively laid down that there is no such thing in English law as a mere 'contract in writing'. If the contract is not by specialty (writing under seal) then it is by parol, and requires a consideration.

The Writ of Account merits a passing notice here from the fact that it was formerly used to enforce claims which in a later stage of our juridical development were enforced by actions of Assumpsit. But inasmuch as it was a droitural writ, like Debt, and not based upon Agreement, it did little or nothing to advance a general conception of obligation ex contractu in English law (*e*). When the wider and more convenient remedy of Account in Equity came into use it speedily superseded the action as it obtained in the Courts of Common Law (*f*).

We have before observed that the Statute of Westminster II, (13 Edw. I, c. 24) by leading to the introduction of actions of Trespass on the Case, laid the foundations of the English law of contract. Let us now endeavor to substantiate this statement by an examination of the 'bold and subtle devices', as Sir Frederick Pollock styles them (*g*), employed by the lawyers of the fifteenth and sixteenth centuries to circumvent the narrow formalism of the King's Court, and to throw open its doors to those who sought to enforce obligations arising upon agreements in general.

Trespass arising out of injuries by actual force is the earliest action for damages simpliciter known to English law; and it is worthy of notice in passing that the word 'trespass' (transgressio) (*h*) was employed as the generic term for civil injuries for a long period in our legal history. Bracton says that every felony is a trespass, although the converse would not be true (*i*). Britton makes the same connotation, and on the other hand uses the word 'torts' to denote certain minor criminal offences (*j*). The latter term.

(*e*) See Pollock's 'Contracts in Early English Law', 6 Harv. Law Rev. 401; Langdell's 'Survey of Eq. Juris', 2 Harv. Law Rev. 243.

(*f*) See Story's Eq. Juris., chap. viii, sec. 446.

(*g*) 'Contracts in Early English Law', 6 Harv. Law Rev. 402.

(*h*) "Trespass, in its largest and most extensive sense, signifies any transgression or offence against the law of nature, of society, or of the country in which we live, whether it relates to a man's person or his property." Black. Com. iii, 208.

(*i*) De Leg. et Cons. Angl. f. 119b.

(*j*) Cf. Britton, i, 105 with i, 77. The Stat. West. II also uses 'trespass' in its ancient generic sense. See Coke's Inst. ii, 418.