

nec habebit exceptionem pecuniae non numeratae contra scripturam, quia scripsit se debere et non solum obligatur quis per verba, sed per scripturam, et per literas, non ut literae quicquam ipsae vel figura literarum obliget, sed oratio significativa quam expriment literae, sed utrumque coöperatur ad obligationem oratio significativa simul cum litera" (x).

In this passage Bracton is honestly expounding the native law of his day, and it will be observed how paramount a part the principle of Estoppel plays in the formal obligation of the Common Law, for he declares that if a person "shall write that he owes money to another, whether the money has been paid to him or not he is bound by the writing, nor can he object that the money has not been paid, in the face of the writing."

It remains to be said that the necessity for the 'carta' to be under seal effectually prevented the extension of the remedy under consideration to parol contracts, and destroyed its usefulness toward the building up of any general theory of conventional law. Thenceforward Debt, as a distinctive legal remedy, began its decline towards obsolescence; and perhaps the chief interest that it holds to-day is for the student of comparative jurisprudence, who finds in the method by which it evolved the formal contract of English law a striking analogy to the development of the contract 'litteris' in the Roman law (y).

The origin of the Writ of Covenant (breve de convention) is not at all clear from the books. It would be reasonable to think that it was an off-shoot from the action of Debt, coming into use when the sealed writing ('carta') became recognized as a good causa debendi; but so far from that being the case we find that this writ was never allowed as a remedy for the recovery of a mere debt, even though the debt was acknowledged by a sealed instrument (z). The reason for this discrimination is to be traced (1st) to the recognition of the non-contractual nature of the obligation in Debt; and (2nd) to the fact that the over-lapping of actions was not favoured in the early history of Procedure. Then

(x) Leg. et Cons. Angl. iii, f. 100b.

(y) "The literal contract is, in short, merely an example of the doctrine of Estoppel". Hunter's Rom. Law, 3rd ed., 527.

(z) Professor Ames (2 Harv. Law Rev. 56) says that prior to the xviii century he could discover no case where plaintiff succeeded in an action of covenant brought in respect of a debt.