Common Law judges viewed the consequent loss of their business and importance with dismay; and so in 14 Hen. VI, 18, we find the Court of King's Bench entertaining an action for mere non-feasance in respect of an undertaking, which must be regarded as the laying of the corner-stone in the edifice of assumpsit as a remedy ex contractu. Action on the Case was brought upon an undertaking to procure certain releases, which defendant had neglected to perform. Plaintiff was met by the old objection that the gist of the action being the non-performance of an agreement, his remedy was in Covenant. This objection was now for the first time overruled by the Court, Paston, C.J., and Juyn, J. instancing the analogous cases of a carpenter or of a surgeon, who if they undertook to perform certain acts or services, and failed to perform them, would be liable on their parol undertaking (assumpsit) in an action on the case, and the plaintiff would not be driven to an action of covenant. This instance is supplemented by an important case in 22 Hen. VI, 44, where it was laid down that if land were sold, the vendor might have an action of debt for the money, and the vendee an action on the case, if he was not infeoffed of the land.

Undoubtedly the last-mentioned cases bring us some distance on the road to a general theory of contract in the Common Law; but it needs no great amount of care to discern that the element of consent up to this stage plays no such paramount part in the development of our system as it did in the Roman law. For instance, if we contrast one of the consensual contracts of the Roman law, e.g. locatio conductio, with its equivalent in the Common Law, letting and hiring, we find that in the former case the contract is obligatory as soon as the parties have agreed on its terms, although nothing may have been paid or done on either side, nor the contract reduced to writing; while, in the latter case, the validity of the contract does not depend upon the meeting of the minds of the parties in a common purpose, but on the consideration passing between them in respect of the subject of their agreement. The difference between the two systems is fundamental and precise: In the one case the obligation arises simultaneously with the 'aggregatio mentium'; in the other the obligation does not attach until the passing of the consideration (s).

(s) See Maine's Ancient Law, 14 ed., p. 333; and the arguments of counsel and opinion of Kent, C.J., in *Thorne* v. *Deas*; 4 Johns. 84.