tion of the law at that time (*s*). What was necessary to the creation of an obligation (causa debendi) in respect of a simple contract, enforceable by the action of Debt, was part performance of the contract. The simple contract did not become a causa debendi until the debtor had received something from the creditor which stood as an equivalent for the obligation sought to be enforced against him. Hence it is obvious that in such a case the obligation was not derived from a promise but from the receipt of a quid pro quo (*t*); and so while it is possible to say that the old action of Debt developed a conception of an element of Contract akin to the modern doctrine of Consideration, it would be quite wrong to say that Debt affords any prototype of the theory of obligation as derived wholly from Agreement (*u*). And we can reach this conclusion without adopting Prof. Langdell's view that the legal mode of creating a debt is not by contract, but by grant, *i. e.*, by the transfer of a sum of money from the debtor to the creditor without delivering possession (*v*).

Adverting now to the proof of the debt, there were two methods in vogue in the early history of the action. It was incumbent upon the plaintiff to produce a written acknowledgement of the causa debendi ('carta'), or a train of witnesses ('secta') to establish his plaint. (*w*). Now it is not surprising to find that suitors were not slow to appreciate the advantages of the 'carta' over the 'secta' mode of proof; and it did not require a very long period of time to convert the 'carta' from the mere evidence of a debt into a debt per se. Thus we have it stated by Bracton: "Per scripturam vero obligatur quis, ut si quis scripserit alicui se debere, sine pecunia numerata sit, sive non, obligatur ex scriptura,

(*s*) Cf. Langdell Contr. (Summ.) ii, p. 1041.

(*t*) Mr. Justice Holmes (Com. Law, pp. 247-288) thinks that the quid pro quo as evolved by the action of Debt was the real parent of the modern doctrine of Consideration; but Prof. Salmond (3 Law Quart. Rev. 178, 179) very strongly argues that the latter was derived wholly from Assumpsit.

(*u*) An illuminating side-light is thrown upon the subject in hand by Holt, C.J., in *Smith* v. *Airey*, 2 Ld. Raym. 1034. He is there reported as saying "winning money at play did not raise a debt, nor was debt ever brought for money won at play, and an indebitatus assumpsit would not lie for it; but the only ground of the action in such cases was the mutual promises. That though there were a promise, yet Debt would not lie upon that." See also *Walker* v. *Walker*, Holt, 328; 5 Mod. 13.

(*v*) It is fair to say that Prof. Langdell admits that his view does not apply to the creation of every kind of debt. See Langdell Contr. (Summ.), ii, 1040.

(*w*) Cf. Glanvill, Bk x, cc. iii and xii.