

does not usually take cognizance of them ; nor, indeed, with such contracts as may be considered in the light of private agreements (*privatae conventiones*) (*n*) does the King's Court intermeddle". Possibly the reason why the King's Court did not 'usually', as Glanvill naively puts it, take cognizance of private conventions inhered in the fact that at least down to the reign of Edward I. the King's Court was extensively used as a medium for augmenting the royal revenues, and only the rich could afford the luxury of litigation there (*o*). However that might be, the paucity of writs of Debt on the plea-rolls is notable in the early stages of the history of Common Law actions ; and it is not until the time of Fleta that we find authority in the books to the effect that private agreements are enforceable in the King's Court (*p*). But even this widening of the province of Procedure does not carry us very far in the development of a general theory of Contract, for it was only private agreements in writing under seal (covenants) that the King's Court then condescended to take cognizance of.

A further reference to Glanvill's text discloses that the old action of Debt required the plaintiff to do two things to entitle him to succeed : First, to allege "a just cause inducing a debt" (*justa causa debendi*) ; and, secondly, to furnish sufficient proof of the matter alleged.

We have been careful to point out above that this action did not contemplate an obligation arising upon a promise or agreement, and we wish to repeat here that none of the *caus debendi* mentioned by the early Common Law writers (although we hear much talk of 'Contracts' by Glanvill (*q*) and find an ambitious attempt at a definition of contractual obligation in Britton (*r*)), are matters of simple or parol contract. Let us take, for example, the contract of sale. It was not until the title to the thing sold passed from the seller to the buyer that an action of Debt would lie for the price ; so long as the contract remained executory on both sides there was no obligation in the contempla-

(*n*) A 'private agreement', as Glanvill used the term, meant an agreement made outside the King's Court. See Salmond, 3 *Law Quar. Rev.* at p. 169.

(*o*) Cf. Poll. & Maitl. *Hist. Eng. Law* (2nd ed.) ii, 205.

(*p*) Fleta, iii, 14, 3.

(*q*) See ante.

(*r*) Bk. I, 62.