although there had been an express undertaking (assumpsit) by the defendant to carry safely the plaintiff's horse.

In another action on the Case in the same reign we find the conception of Tort in its generic scope laying hold of the minds of the medieval lawyers. Y.B. 42 Edw. III, 13, discloses a claim brought against an inn-keeper in which the plaintiff declared that he came to the defendant's inn, and left personal belongings in the chamber allotted to him there; and while he was absent from the room they were taken away, through, as plaintiff alleged, the neglect of the defendant and his servants, "per tort et enconter les peas", and "to the damage to the plaintiff, &c." Plaintiff got a writ according to his case, and the action was held good.

The above instances show that efforts at classification were coeval with the enlargement of legal remedies under the Statute of Westminster the Second. As would be expected the medieval lawyers saw the incongruity inhering in the fact that one and the same remedy lay for the enforcement of such divergent rights as those arising out of Wrongs and those dependent upon Agreement; but it is a matter of history that this desire of the pleaders for classification was not accomplished for a century after the statute referred to was passed.

Four years after the adjudication of the case last mentioned the books disclose a case in which counsel for the defendant objected to the form of the action (*n*). The plaintiff brought suit against the defendant, a farrier, for that being employed to shoe the plaintiff's horse "quare clavem fixit in pede equi sui in certo loco per quod proficium equi sui per longum tempus amissit," &c. It was objected that while the writ was in trespass, it was not laid 'vi et armis.' To this objection plaintiff answered that his writ was according to his case; and though it was further contended that if any trespass was done the writ should aver, 'vi et armis', or 'malitiose fixit', besides 'contra pacem', the plaintiff's action was maintained.

On the other hand, we have a case (*o*) wherein the plaintiff charged that the defendant took two bushels of corn from the plaintiff 'with force and arms', out of a certain quantity left with the defendant to be ground. Defendant objected that as plaintiff

(*n*) Y.B. 46 Edw. III, 19 pl.

(*o*) Y.B. 44 Edw. III, 20.