however, became nomen generalissimum in the substantive law of Wrongs after Trespass took a definite and peculiar place in the law of Procedure.

Before the Statute of Westminster II for an injury done to property in possession, or to the person accompanied by actual contact, the proper remedy was the Writ of Trespass 'vi et armis, contra pacem'. Now it is obvious that many cases of wrongs would arise lacking the element of violence or force committed by the wrong-doer, and yet in every way as worthy of redress as complaints for which the 'breve de transgressione' would lie. What more natural, then, when the Edwardian statute authorized the framing of new writs analogous to those already in use, that writs of Trespass on the Case should make their appearance on the plea-rolls? And so careful are the Clerks in Chancery to observe the statutory injunction concerning analogy that while the new writs omit the allegation of 'force and arms' they scrupulously aver that the wrong was done 'contra pacem.' This last averment, by the way, did much to preserve the original theory of the action; for a trespass in strictness should be redressed by a fine paid to the Crown as well as by a private satisfaction to the person suing for the injury done him (*k*). It was not until 46 Edw. III that 'contra pacem' came to be dropped from declarations in actions on the Case (*l*).

There are instances of the 'action sur le Case' in the Year-Books of both Edward I and Edward II, but the evolution of Case for breach of a promise, or any undertaking, (assumpsit) occurred between the twenty-second and forty-second years of the reign of Edward III. In the former year (*m*) we find a plaintiff alleging that the defendant had undertaken to ferry plaintiff's horse over the Humber safely, but that he had overladen his boat so that the plaintiff's horse perished "à tort et à damages, &c." It was contended for defendant that upon such an undertaking the plaintiff's remedy was in Covenant; but it was decided that the defendant had committed a trespass in overloading his boat, and that Case would lie therefor. It is apparent at a glance that the theory upon which this case was decided was 'tort'

(*k*) Cf. Stephen's Com. iii. Bk. 5, c. vii.

(*l*) See Reeves Hist. Eng. Law, iii, c. 16.

(*m*) Y.B. Edward III, 22 Ass., pl. 41, fol. 94.