

THE ORIGINS OF THE ACTION OF TRESPASS ON THE CASE

ELIZABETH JEAN DIX†

WITHIN THE last decade the origins of the action of trespass on the case have become a controversial subject arousing interest among lawyers and historians as well as among those more specialized hybrids, legal historians. At the beginning of this century no one questioned the theory of the origins of the action proposed by Ames, Holmes, Holdsworth, Salmond and others.¹ It was generally believed by these writers that the action of trespass on the case was a direct derivative from the well known *in consimili casu* clause of Edward I's Statute of 1285, Westminster II, chapter 24. Behind this belief was the support of older writers, Chitty, Reeves, Stephen and Blackstone,² confirming beyond doubt the relationship between the action of case and Westminster II. In the course of the last thirty years, however, attention has been directed to flaws in the generally accepted theory of the origin of case. The objections were strongly voiced several years ago by Mr. Theodore F. T. Plucknett, who concluded from his study that the background, content and results of the Statute of Westminster II, and particularly of the *in consimili casu* clause, indicated that the action of case had no connection with the Statute.³

There are two sides to the present controversy: one is represented by Mr. Plucknett himself; the other is represented by Sir William Holdsworth⁴ and his associate at Oxford, Mr. P. A. Landon.⁵ In support

† Ph.D., Yale University, 1936. This article is part of a dissertation presented for the degree of Doctor of Philosophy in Yale University, June, 1936.

1. The opinion of Holmes was that "the famous statute of 13 Edward I, c. 24, authorized the office from which the old writs issued to frame new ones in cases similar in principle to those for which writs were found, and requiring like remedy, but not exactly falling within the scope of the writs already in use. Thus writs of trespass on the case began to make their appearance; that is, writs stating a ground of complaint analogous to a trespass, but not quite amounting to a trespass as it had been sued for in the older precedents." HOLMES, *THE COMMON LAW* (1881) 274-75. See AMES, *LECTURES ON LEGAL HISTORY* (1913) 442; 2 HOLDSWORTH, *HISTORY OF ENGLISH LAW* (1923) 365; MAITLAND, *EQUITY AND THE FORMS OF ACTION* (1909) 345-46; SALMOND, *LAW OF TORTS* (8th ed. 1934) 4, n. q.; 3 STREET, *FOUNDATIONS OF LEGAL LIABILITY* (1906) 249; SUTTON, *PERSONAL ACTIONS AT COMMON LAW* (1929) 24 *et seq.*

2. 3 BL. COMM. *122; 4 *id.* at *442; 1 CHITTY, *PLEADING* *95-96; 3 REEVES, *HISTORY OF THE ENGLISH LAW* (1787) 89; STEPHEN, *PLEADING* *15-16.

3. Plucknett, *Case and the Statute of Westminster II* (1931) 31 COL. L. REV. 778; see also Plucknett, *Case and Westminster II* (1936) 52 L. Q. REV. 220.

4. Note (1931) 47 L. Q. REV. 334.

5. Landon, *The Action on the Case and the Statute of Westminster II* (1936) 52 L. Q. REV. 68.

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The History of English Law Frederick Pollock (Sir), Frederic William Maitland, The Origin and Development of the Negligence Action, 1970 **A Concise History of the Common Law** Theodore Frank Thomas Plucknett, 2001 Originally published 5th ed Boston Little Brown and Co 1956 *The Origins of the Action of Trespass on the Case* Elizabeth Jean Dix, 1937 **A Concise View of the Origin, Constitution and Proceedings of the Honourable Society of the Governor and Assistants of London, of the New Plantation in Ulster ... Commonly Called The Irish Society, Etc** Society of the Governor and Assistants of London, of the New Plantation in Ulster (London), 1822 A concise view of the origin, constitution, and proceedings of the Honorable Society of the Governor and Assistants of London, of the New Plantation in Ulster, commonly called the Irish Society. With an appendix of documents Society of the Governor and Assistants of London, of the New Plantation in Ulster (LONDON), 1832 *A Concise View of the Origin, Constitution and Proceedings of the Honorable Society of the Governor and Assistants of London of the New Plantation in Ulster, Within the Realms of Ireland, Commonly Called the Irish Society* Irish Society (London, England), 1832 *Historical Foundations of the Common Law* S. F. C. Milsom, 2014-05-19 Historical Foundations of the Common Law provides a general overview of the development of the common law The book is comprised of 14 chapters that are organized into four parts The first part deals with the institutional background and covers the centralization of justice the institutions of the common law and the rise of equity The second part deals with land properties while the third part talks about legal obligations The last part details criminal administration and law The text will be of great use to individuals who have an interest in the development of the common law *A Concise View of the Origin, Constitution and Proceedings of the Honorable Society of the Governor and Assistants of London* Irish Society (London, England), 1822 **The Yale Law Journal**, 1925 A Concise View of the Origin, Constitution, and Proceedings of the Honorable Society of the Governor and Assistants of London of the New Plantation in Ulster Irish Society (London, England), 1842 The Evolution from Strict Liability to Fault in the Law of Torts Anthony Gray, 2021-02-25 Gradually the law of tort has shifted away from a strict liability approach to one where fault predominates This book charts important case law documenting this shift It seeks to understand how and why it occurred Given that the Rylands v Fletcher decision is typically seen as a prime exemplar of strict liability it focusses particularly on that case as part of the historical development of tort law It considers the intellectual arguments made in favour of strict liability and for fault based liability Having done so it then focusses on particular areas of the law of tort including nuisance defamation and trespass It is somewhat anomalous that though most would view these as examples of torts of strict liability fault considerations have become prominent in their application This presents an uneasy compromise where torts that are notionally strict in nature are infused with fault considerations often through exceptions or defences This book advocates for further development in the law of tort to better reflect a primarily fault based approach to liability at least in the common law

This would make the law of tort more coherent **A Historical Introduction to English Law** Russell Sandberg, 2023-05-11 There are some stories that need to be told anew to every generation This book tells one such story It explores the historical origins of the common law and explains why that story needs to be understood by all who study or come into contact with English law The book functions as the prequel to what students learn during their law degrees or for the SQE It can be read in preparation for or as part of modules introducing the study of English law or as a starting point for specialist modules on legal history or aspects of legal history This book will not only help students understand and contextualise their study of the current law but it will also show them that the options they have to change the law are greater than they might assume from just studying the current law *The Origin and Persistence of Evil in Galatians* Tyler A. Stewart, 2022-02-25 Was Paul's view of evil based on Adam's fall or a mere reflex of Christology Tyler A Stewart argues that in Galatians Paul's thoughts about where evil comes from and why it continues are not based on Adam's fall as the background story but rather the rebellion of angels Page 4 of printed paper wrapper *A History of English Law: (1066-1485) The mediaeval common law* Sir William Searle Holdsworth, 1923 **Columbia Law Review**, 1928

Comparative Legal History Olivier Moréteau, Aniceto Masferrer, Kjell A. Modéer, The specially commissioned papers in this book lay a solid theoretical foundation for comparative legal history as a distinct academic discipline While facilitating a much needed dialogue between comparatists and legal historians this research handbook examines methodologies in this emerging field and reconsiders legal concepts and institutions like custom civil procedure and codification from a comparative legal history perspective **Handbook of the Law of Code Pleading** Charles Edward Clark, 1928 **A History of English Law** Sir William Searle Holdsworth, 1923 **The Law Quarterly Review**, 1887

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