

= Slade 's Case =

Slade 's Case was a case in English contract law that ran from 1596 to 1602 . Under the medieval common law , claims seeking the repayment of a debt or other matters could only be pursued through a writ of debt in the Court of Common Pleas , a problematic and archaic process . By 1558 the lawyers had succeeded in creating another method , enforced by the Court of King 's Bench , through the action of assumpsit , which was technically for deceit . The legal fiction used was that by failing to pay after promising to do so , a defendant had committed deceit , and was liable to the plaintiff . The conservative Common Pleas , through the appellate court the Court of Exchequer Chamber , began to overrule decisions made by the King 's Bench on assumpsit , causing friction between the courts .

In Slade 's Case , a case under assumpsit , which was brought between judges of the Common Pleas and King 's Bench , was transferred to the Court of Exchequer Chamber where the King 's Bench judges were allowed to vote . The case dragged on for five years , with the judgment finally being delivered in 1602 by the Chief Justice of the King 's Bench , John Popham . Popham ruled that assumpsit claims were valid , a decision called a " watershed " moment in English law , with archaic and outdated principles being overwritten by the modern and effective assumpsit , which soon became the main course of action in contract cases . This is also seen as an example of judicial legislation , with the courts making a revolutionary decision Parliament had failed to make .

= = Background = =

Under the medieval common law , there was only one way to resolve a dispute seeking the repayment of money or other contract matters ; a writ of debt , which only the Court of Common Pleas could hear . This was archaic , did not work against the executors of a will and involved precise pleading ; a minor flaw in the documents put to the court could see the case thrown out . By the middle of the 16th century lawyers had attempted to devise an alternative using the action of assumpsit , which was technically a type of trespass due to deceit . The argument was based on the idea that there was an inherent promise in a contract to pay the money , and that by failing to pay the defendant had deceived the plaintiff . By 1558 the lawyers had succeeded , with the Court of King 's Bench agreeing to hear cases under this piece of legal fiction . The judges of the Common Pleas , however , a more traditional group , rejected this argument and only accepted cases where an actual promise had been made in addition to the contract .

The action of assumpsit had several advantages over a writ of debt ; the plaintiff could count on always having a jury , while in writs of debt the defendant could rely on wager of law , where he produced twelve people to swear he did not owe the plaintiff money and had the case dismissed . In addition , it worked for executory agreements , not just normal contracts . In 1585 a new form of the Court of Exchequer Chamber was set up , an appellate court where the Common Pleas judges held a majority , and regularly began to reverse King 's Bench judgments which were based on assumpsit . This , and the conflict between the King 's Bench and the Common Pleas as a whole , was problematic ; a plaintiff at assizes could not be sure which sort of judge his case would come before , lending uncertainty to the law . Boyer suggests that , in this environment , the Chief Justice of the King 's Bench John Popham deliberately provoked the Common Pleas to resolve the matter , and did so through Slade 's Case .

= = Facts = =

John Slade was a grain merchant , who claimed that Humphrey Morley had agreed to buy a crop of wheat and rye from him , paying £ 16 , and had reneged on the agreement . He brought the case before the Assizes in 1596 , where it was heard by two judges ; one of the Common Pleas , and one of the King 's Bench . It was heard under assumpsit , and the jury found that Morley indeed owed Slade money . Before a judgment could be issued , Popham had the case transferred to an older version of the Court of Exchequer Chamber , which , sitting in Serjeant 's Inn , allowed the King 's

Bench judges to sit .

Edward Coke was counsel for Slade , arguing that the King 's Bench had the power to hear assumpsit actions , along with Laurence Tanfield , while Francis Bacon and John Doddridge represented Morley . The quality of legal argument was high ; Bacon was a " skillful , subtle intellect " capable of distinguishing the precedent brought up by Coke , while Doddridge , a member of the Society of Antiquaries , knew the records even better than Coke did . Coke , rather than directly confronting opposing counsel , made a twofold argument ; firstly , that the fact that the King 's Bench had been allowed to hear assumpsit actions for so long meant that it was acceptable , based on institutional inertia , and second that , on the subject of assumpsit being used for breaches of promise , that the original agreement included an implied promise to make payment .

The case continued for five years ; at one point , the judges let the matter continue for three years because they could not reach a decision . Eventually , in November 1602 , Popham issued a judgment on behalf of the court which stated " Firstly , that every contract executory implies in itself a promise or aumpsit . Secondly , that although upon such a contract an action of debt lies , the plaintiff may well have an action in the case upon the assumpsit . " Coke , in his report of the case ( published in 1604 ) reports that the judgment was unanimous , while more modern commentators such as Boyer assert that it was narrow , most likely 6 to 5 , with the dividing line being between the King 's Bench judges and Common Pleas .

= = Judgment = =

Lord Popham CJ held that Slade could sue , and was successful . He said the following .

= = Significance = =

The impact of the case was immediate and overwhelming . Ibbetson considers Slade 's Case to be a " watershed " moment , in which the archaic and conservative form of law was overwritten by a modern , more efficient method . Assumpsit became the dominant form of contract cases , with the door " opened wide " to plaintiffs ; Boyer suggests this was perhaps " too wide " . In his Commentaries on the Laws of England , William Blackstone explained that this was the reason why the Statute of Frauds was subsequently passed in 1677 :

The case is particularly notable as an example of judicial legislation , with the judges significantly modernising the law and moving it forward in a way Parliament had not considered . As a side impact , Coke 's arguments were the first to define consideration . The conservative outlook of the Common Pleas soon changed ; after the death of Edmund Anderson , the more activist Francis Gawdy became Chief Justice of the Common Pleas , and other Common Pleas judges , many of whom were uncertain but had followed Anderson 's lead in the case , changed their mind .