

Men have argued for centuries about the purpose and uses of the law. The question will more than likely never be settled as long as the human mind has the capacity to think and reason. One can say however, that in general, the laws that men create are put into action in order to help and promote the proper functioning of society.

When the law conflicts with this simple concept, what one often finds is that in order to satisfy its' needs society will find a way around the law. The law may indeed still be on the books, but the reality will be quite different. Simply said, "Law is often times a slave to human nature." No where is there a better description of societys' attempts to find its way around the law than the 15th century debate involving what constituted damages and what constituted debt (and in a larger sense what constituted the relationship between them). This debate was eventually settled by the famous 1604 case of Slade v. Morley. Before, however, we go into the particulars of that case, we must address the forces and influences that brought the debate to its fruition.

The major points in Medieval common law in this debate centered around two major actions, that of covenant and that of debt. The action of covenant put a great deal of stock in the written word (deed), in fact, if one were to claim that a covenant had been broken, one would almost certainly have to show that a written document had been violated. The action

of debt, on the other hand, did not require a written notice, due to the fact that a debt could arise out of a business deal, such as a loan or sale.

Because of the fact that all business transactions cannot be reduced to writing, the Royal courts took the view that wager of law would be permitted as a defense against a claim of indebtedness. The concept of wager of law proved to be a double edged sword, however, in that it protected the innocent from fraudulent claims, but often left the creditor holding the bag in cases where there was truly a nonpayment by the person in question.

This last point is the driving force that led to Slades' case. Creditors, because they stood little or no chance in recovering under the action of debt (due to the wager of law dodge), sought to bring their grievance not as simply nonpayment but as a breach of promise and or covenant. This action to recover without resorting to the action of debt came to be known as assumpsit (he promised, he took). Assumpsit in many ways served the same function as trespass on the case in earlier days. It allowed a creditor to attempt to obtain the monies due him through the vehicle of tort, rather than debt (thus avoiding the wager of law). One would assume that very much like the legal vehicle of trespass on the case this doctrine would simply incorporate itself into the day to day workings of the law. However, two major questions and problems arose:

1. How were judges to decide if a case belonged in a category of debt or assumpsit.

of debt or assumpsit? As said before the line between the two legal concepts was sometimes distinct, but more often extremely blurry and ambiguous.

2. If A brought a suit against B in assumpsit and won could he then attempt to recover the debt itself in an action of debt?

is this the issue

It took the case of Slade v. Morley to settle the matter. Simply said, Slades' case concerned the selling of a corn field to Morley for 16 pounds. Morley assumed the land and then failed to pay. The Jury ruled the "the sale had taken place but that there was no promise or undertaking other than said bargain". This verdict forced the court to consider en banc whether the case would lie on contract alone or whether or not it dealt with the promise to pay.

This point was argued for five years, ~~and~~ not reaching agreement, the Kings bench reduced the question to a show of hands and concluded that "the plaintiff in this action on the case on assumpsit should not only recover ~~only~~ damages for the special loss (if any be) which he had, but also for the whole debt, so that a recovery or bar in this action would be a good bar in an action of debt brought upon the same contract".

Thus, the case of Slade v. Morley marked the final chapter of the unification of contract law and assumpsit.

not yet

Now, creditors did not have to worry about "wager of law" anymore. Debt and the promise to pay were one in the same and jury trials became the rule. Slades case, like many

important cases throughout hisrory, did not settle all of the problems and many (ie. Coke) felt that it created more problems than it solved (namely perjury). However, this issue must be explored at a different time. Suffice to say that the doctrines of assumsit, wager of law, and the conclusions of Slade all help us to see clearly that if the law will not adjust to society, society will find a way to adjust the law.

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