

went steadily forward after the decisions we have referred to in the fifteenth century. For a long time, however, it was contended that inasmuch as Assumpsit implied fraud or deceit, it should be confined to cases where the demand was for damages, and not be substituted for Debt, where it would have the effect of preventing the defendant from 'waging his law' (x). Now Indebitatus Assumpsit had two advantages over Debt, the first being that the defendant could not 'wage his law', and so preclude the plaintiff from submitting his case to the jury; the second being that the niceties of pleading in Debt were overcome by the plaintiff being allowed to state merely the general nature of his action. But the question was settled once for all by *Slade's Case* (y) in the latter part of Queen Elizabeth's reign. That was an action of Assumpsit for the price of standing grain, bought by defendant but for which he refused to pay, with intent, as was alleged, to defraud plaintiff. It was objected that Debt only lay in such a matter, and if the plaintiff had an action on the Case it would take away the defendant's benefit of wager of law. In this case the Common Pleas and Queen's Bench were at variance, and "for the the honour of the law and for the quiet of the subject, in the appeasing of such diversity of opinions" the case was twice argued before all the "Justices of England and Barons of the Exchequer", the last time by Sir Edward Coke, for the plaintiff, and Francis Bacon, for the defendant, and it was ultimately resolved in favour of the plaintiff; the result being that proof by the plaintiff of a simple contract debt is sufficient to support an action thereon, although there is no express promise by the defendant to pay the same.

Thus was the notion of the 'implied promise' introduced into English law, and the native theory of Contract, if we may be said to have any theory of Contract as distinct from mere rules of Procedure, advanced to its present stage of development—that is to say, when stripped of the adventitious glosses of some latter-day expositors.

At the beginning of this paper we intimated that the attempt to ingraft the consensual theory of the Civil Law upon the English law of Contract was a mistake, and we look upon the instances and authorities we have collated from the books as

(x) See Gilbert on Debt, p. 423.

(y) 4 Rep. 91a and 94b.