Illinois Supreme Court History:
Breaking Promises

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In the nineteenth century and well into the early twentieth century, assumpsit was by far the most common action in the Illinois court system. In its most general form, assumpsit was a remedy to recover damages for any failed contract—oral or written—not under seal. In *Willenborg v. Illinois Central Railroad*, 11 Ill.App. 298 (1882), the court noted that "assumpsit is technically an action on the case, and may be resorted to when there is a breach of contract, express or implied, for the payment of money or omission of any other act."

In the early Illinois period, promissory notes were used in lieu of transacting money. Since hard money, like gold and silver, were rare, and since state bank notes were often valued at pennies on the dollar, promissory notes served as a primary method of transactions and paying debts.

When a person failed to pay a promissory note on its due date, the holder of the note would sue in assumpsit. In 1874, the use of assumpsit was so common, the Illinois General Assembly allowed actions of assumpsit to be brought on sealed obligations, and the Illinois Supreme Court agreed in *Protection Life Insurance v. Palmer*, 81 Ill. 88 (1876). Prior to this change, covenant was the proper action for contracts under seal.

For perspective on the popularity of assumpsit, in Abraham Lincoln's law practice, he handled approximately 5,100 total cases over the course of his twenty-five-year legal career. Lincoln served as an attorney in at least 1,200 assumpsit cases. Nearly 25 percent of Lincoln's entire caseload was in assumpsit.

While assumpsit was predominately used to enforce contracts regarding debts, it had other uses as well. Jilted brides-to-be used the action of assumpsit to sue former fiancées for refusing to marry. In one example in the Edgar County Circuit Court in 1851, Harriet Benson claimed that Milton Mayo had promised to marry her but instead he married someone else. Benson sued Mayo in an action of assumpsit for breaching his promise to marry her, and she requested $2,000 in damages. Mayo responded that Benson had said that she would not marry him "because he was a half-brother of a negro" and because her fickleness would make him unhappy. The jury found for Harriet Benson and awarded her $400 in damages.

During the height of the use of assumpsit, the creditor/plaintiff in a lawsuit was generally the victor in court. If the debtor/defendant could prove that he had paid the debt or that the consideration of the note was void, then he could win the case in court. In an 1840 Illinois Supreme Court case, *Bailey v. Cromwell*, 4 Ill. 70 (1841), Bailey had purchased an African American slave from Cromwell with a promissory note. Cromwell sued in assumpsit when Bailey failed to pay. At the Supreme Court, Justice Sidney Breese wrote that Illinois prohibited slavery, therefore, the "sale of a free person is illegal, and that being the consideration of the note, that is illegal also."

The use of assumpsit decreased significantly when the Illinois General Assembly passed the 1933 Illinois Civil Practice Act, which eliminated the old Common Law forms of action in favor of a more streamlined court procedures. Subsequent acts in the 1950s and 60s further eroded the use of the archaic action of assumpsit.