

BOVILL
C.J.
&
SMITH, J.
1890.
July 31.

[BOVILL, C.J. AND SMITH, J.]

SOPHOCLI ATESHLI,

Plaintiff.

v.

PAVLIDES & Co. AND EVAGORA G.
NICOLAIDES

Defendants.

PENALTY—BREACH OF AGREEMENT—APPENDIX TO COMMERCIAL
CODE, ARTICLE 98.

A stipulation contained in an agreement to the effect that if either party make default in carrying out the agreement the defaulting party shall pay to the other a sum of money, will be enforced against the party who has failed to carry out the agreement.

APPEAL from the District Court of Paphos.

The action was brought on a contract, by which the defendants agreed to purchase, and the plaintiff to sell, from 430 to 460 okes of silk cocoons, to be delivered on the 1st or 2nd August, 1889, at purchasers' option. Payment to be made as to £150 within four days of the date of the contract, and as to the balance immediately on delivery. It was further agreed that either party who made default should pay £40 to the other.

The sum of £150 was duly paid and the plaintiff delivered to the defendants a quantity of silk cocoons. The defendants having refused to pay the balance of the purchase money agreed upon, this action was brought.

The defendants asserted in their defence that there had been a dispute between the parties as to half an oke of silk, and that but for this, they would have paid the balance of the purchase money.

The District Court found, as a fact, that there had been no question raised as to the half oke of silk—that the defendants had failed to pay the balance of the purchase money on delivery, as stipulated by the contract, and that the agreement for the payment of £40 was governed by Article 88 of the Appendix to the Commercial Code, and that the defendant were liable to pay the agreed sum of £40 to the plaintiff.

The defendants appealed.

Pascal Constantinides, for the appellants, contended that, on the facts as proved, the defendants were justified in not paying the balance of the purchase money.

Diran Augustin for the respondent.

Judgment: This action was brought to recover the price of silk and £40, the amount of a penalty alleged to be due in consequence of a breach of contract, entered into between the plaintiff and defendants. The appeal is made only as to that part of the judgment which orders the defendants to pay the amount of the penalty to the plaintiff. We do not view with favour contracts the execution of which is sought to be enforced by a stipulation as to the payment of a sum of money in case of a breach by either party. They are, however, very common, and we know of nothing in the law to forbid parties entering into a contract containing an agreement, that if either party fails to carry out his obligation, he shall pay a specific sum to the other; and if they do so agree, we see no reason why the contract should not be enforced: in the present case the parties deliberately agreed that if the silk delivered were not paid for immediately on delivery the defendants should pay £40 to the plaintiff. It was argued before us, that the payment was not made because a bona fide dispute as to the quantity delivered had arisen. It was said that there was a dispute as to the delivery of a half oke of cocoons; but both at the settlement of the statement of the matters in dispute, and in giving his evidence at the hearing, the plaintiff denied that there was any such dispute. The plaintiff was not cross examined on this point, and the defendants were not called to impugn the accuracy of his evidence. The Court below found that, by reason of their default in payment of the price of the silk, the defendants had rendered themselves liable to pay the sum of £40 and we are of opinion that the judgment was right. We do not, however, think that the plaintiff has any right to claim the payment of interest on the £40, and we shall vary the judgment of the Court below by directing that interest only becomes payable from the date of judgment.

Appeal dismissed.

BOVILL,
C.J.
&
SMITH, J.
SOPHOCLI
ATESELI
v.
PAVLIDES
AND OTHERS.
