

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

MANOLI JOACHIM

Plaintiff,

v.

JOSIF FRANCIS

Defendant.

SMITH, C.J.

&
MIDDLE-
TON, J.
1892.

Nov. 10.

PROMISSORY NOTE—MERCHANT—NOTE GIVEN FOR PURPOSES OF
TRADE—PRESCRIPTION—OTTOMAN COMMERCIAL CODE, § 146.

An action on a promissory note may be prescribed under Article 146 of the Ottoman Commercial Code if the note had been given for purposes of trade even though the person making it has not the status of a merchant.

A person engaged in buying and selling goods may have the status of a merchant, even though he keeps no books and has no fixed place of abode.

APPEAL from the District Court of Famagusta.

The facts and arguments sufficiently appear from the judgment.

Diran Augustin for the appellant.

Respondent in person.

Judgment : This is an appeal from the judgment of the District Court of Famagusta. The plaintiff claimed the sum of £9 13s. due on a promissory note dated the 25th July, 1882, and falling due on the 26th August, 1882. This note was given in payment of goods purchased by the defendant from the plaintiff at Seleukia.

Nov. 14.

The defendant pleaded that he did not make the note ; that it was a forgery, and that it was prescribed.

The plaintiff gave evidence in support of his case, and stated that the defendant purchased goods of him, in payment for which the note was given ; and that the defendant signed the note. He admitted that the note was written by him, and that the signature of the witnesses, both of whom he stated were now dead, were also in his handwriting, though he alleged that they were present and authorised him to sign their names. In support of his case he called a witness who said he was present when the note was made, and who corroborated the statement as to the circumstances under which it was made. He also stated that the defendant disappeared from Seleukia after the note fell due, and that he had not seen him until he

SMITH, C.J. came to Cyprus for the purpose of this action. He admitted
 & that when the note became due, he was informed that
 MIDDLE- defendant was in Cyprus, and that he endorsed the note
 TON, J. to someone in Larnaca to sue on, but that it had been
 -- returned to him, as the defendant denied making it.

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The defendant denied that he had purchased the goods, or signed the note; and he stated that he had since the date when the note became due, met the plaintiff on two occasions at a place called Sinator.

The Court was apparently satisfied on the evidence that the defendant made the note and gave judgment for the plaintiff.

As regards the defence of prescription, the District Court held that this note does not come within Article 146 of the Commercial Code, as it was made by a man who was not a merchant, inasmuch as the defendant has no fixed place of abode and keeps no books. Against this decision the defendant appeals, contending that the judgment of the Court is against the weight of the evidence, and also was wrong in deciding that the action was not prescribed.

It appeared to us that the case depended upon the view we should take of the latter point, and the appellant's counsel, therefore, confined his argument to the question of prescription. He contended that the grounds on which the District Court has decided that defendant is not a merchant are not defined by any law, that though he has no shop or warehouse he may still be a merchant; and that he does not cease to be so by the fact that he does not keep any books, though his failure to do so may render him liable to be declared a bankrupt under Article 290 of the Commercial Code, and consequently liable to imprisonment under Article 232 of the Penal Code. If the defendant is a merchant, the District Court held that the action on the note is prescribed.

The defence of prescription is founded upon Article 146 of the Ottoman Commercial Code. We have had a careful translation made of this Article, the first paragraph of which runs as follows: "All actions relating to bills of exchange or bills to order, signed by merchants, traders and bankers, or given for purposes of trade, shall be prescribed at the expiration of five years."

If the note now sued on was given by a merchant, or was given for the purposes of trade, this action is prescribed. Whether the defendant be a merchant or not, if it was given for purposes of trade, it is immaterial whether the defendant be a merchant or not.

There can, we think, be no doubt that the note was given by the defendant for purposes of trade. The evidence before us shews that he was at the time the note was made at Seleukia, and engaged in business there, "buying and selling stuffs." On a purchase of goods from the plaintiff this note was given by him in payment; and it appears to us to be impossible to hold otherwise than that it was given for purposes of trade.

For these reasons it appears to us that the judgment of the District Court was wrong, and must be reversed.

It is not necessary for us to decide whether the defendant is a merchant or not, but we do not agree with the reasons given by the District Court for holding him not to be a merchant. It appears to us, that a man may have the legal status of a merchant even though he keeps no books, or has no fixed place of abode.

We may observe that in this case there was no evidence as to whether the defendant kept books or not, but it is not contended that he did.

Appeal allowed.

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