1913.

Present: Pereira J. and De Sampayo A.J.

MIRAMPILLAI *v.* PASSE & CO.

117—D. C. Colombo, 34,971.

Partnership—Power of one partner to bind the others by granting promissory notes on behalf of the firm—Trade.

In the case of a trading firm one partner has in law the power to bind the other partners by granting on behalf of the firm promissory notes for the purposes that fall within the scope of the ordinary business of the firm. In the case of other partnerships one partner has no such power without express or implied authority. Authority would be implied if the other partners by their conduct led the public to believe that each partner had the authority of the firm to grant notes, or if it be proved that it was usual or necessary in the case of companies generally instituted for purposes similar to those of the partnership in question to issue promissory notes for the purpose of carrying on their business.

The word "trade" has now the technical meaning of buying and selling with or without profit, although it is in some of the older enactments used in a wider sense.

THE facts appear in the judgment.

Elliott, for plaintiff, appellant.

A. Drieberg, for defendants, respondents.

Cur. adv. vult.

June 10, 1913. PEREIRA J.—

The two defendants were members of the firm of Passe & Co., and the question in this case is whether D. A. Passe, the first defendant, had any right to bind the second defendant as a member of the firm by granting to the plaintiff the promissory note sued upon by him. If the firm were a trading firm, there could be no question that the first defendant would have full power to incur liability on behalf of the firm as a party to a bill or note for any purpose of the firm that fell within the scope of its ordinary business, and that the signature by him of the firm's name would bind the second defendant equally with himself; but on the material before me I am not prepared to hold that the firm of Passe & Co. was a trading partnership. Although the word "trade" is used in some legislative enactments to mean or include an art, craft, or mystery, it appears to have now the technical meaning of buying and selling. Thus "farming," as observed by Willes J. in the case of *Harris v. Amery*,[1] "is a business though not a trade, and banking is not strictly a trade." In *Grainger v. Gough* [2] Lord Davey observed as follows: "Now, what does one mean by a trade or the exercise of a trade?

[1] *L. R. 1 C. P. 148, 154.*

[2] *(1896) A. C. 325, 345.*

Trade in its largest sense is the business of selling, with a view to profit, goods which the trader has either manufactured or himself purchased." As regards the matter of profit, Lord Coleridge C.J. in *In re the duty on the Estate of Incorporated Council of Law Reporting*[1] observed that although it might be true that in the majority of cases the carrying on of a trade did, in fact, include the idea of profit, yet the definition of the mere word "trade" did not necessarily mean something by which a profit was made. If then the defendant's firm was not a trading partnership, it is necessary that, in order to entitle him to succeed, the plaintiff should establish that the first defendant had authority to bind the firm by means of promissory notes. This authority may, of course, have been either expressed or implied. Clearly the first defendant had no such express authority. As I read the deed of partnership, it prohibits the granting by one partner, in the name of the firm, of promissory notes, and the deed speaks of such an act as the granting of notes as a " breach of the provisions " of the clause containing the prohibition. As regards implied authority, there would, of course, be such authority if the second defendant by his conduct led the public into the belief that the first defendant had the authority of the firm to grant promissory notes, but there is no evidence to show that the second defendant was guilty of such conduct at all. True, the first defendant had at one time granted certain notes in the name of the firm, but there is nothing to show that the second defendant stood by while the first defendant did so, or that even the first defendant did so to the knowledge of the second defendant. Authority would also be implied if, as the District Judge observes in view of the decision in the case of *Dickinson v. Valpy*,[2] it was usual or necessary in the case of partnerships like the defendants' firm to issue promissory notes. In that case Bayley J. observed: " The question which could be submitted to the jury was whether companies instituted for similar purposes had constantly been in the habit of drawing and accepting bills, or whether it was absolutely necessary to do so for the purpose of carrying on the concern." In the present case there is evidence that the defendant company and a company doing similar business, of which the plaintiff is the proprietor, have occasionally, for particular purposes, issued promissory notes, but there is no evidence that (to use the words of Bayley J. cited above) companies generally instituted for similar purposes have constantly been in the habit of issuing promissory notes, or that it was absolutely necessary to do so for the purpose of carrying on their business.

I would affirm the judgment appealed from with costs.

DE SAMPAYO A.J.—I concur.

Appeal dismissed.

[1] *22 Q. B. D. 279, 293.*

[2] *10 B. & C. 128; Eng. Rep., vol. 109, p. 399.*