

By claiming his interest in the shape of paddy instead of money the plaintiff cannot escape from this principle. Parties may settle by agreement the amount of damages, uncertain in their nature, and when the purchase and delivery of goods is their object, the non-delivery may be made the subject of a stipulation in the shape of a penal sum to be strictly awarded.

Here the delivery of rice was not the main object; it was used as a mode of computing high interest. The contract in effect is that, if principal with 12 per cent. is not paid, double the amount shall be payable on the 15th November. Such a contract between parties such as we have here a Court of Equity cannot enforce in my opinion.

KINDERSLEY, J.—I think we ought not to enforce the stipulation for paddy. Looking at the better knowledge of the market, probably possessed by the plaintiff, the bargain appears unconscionable. And under the new Contract Act the plaintiff is entitled only to compensation for the money lent. The cases in the second volume of our reports (1) were before the Contract Act. Even a sum, fixed as liquidated damages, is not recoverable under that Act as a matter of course, but it is taken as an outside limit. I would dismiss the appeal with costs.

*Appeal dismissed.*

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## APPELLATE CIVIL.

*Before Mr. Justice Innes and Mr. Justice Kindersley.*

GOVINDAN (DEFENDANT) APPELLANT *v.* KANNARAN AND ANOTHER  
(PLAINTIFFS) RESPONDENTS (2).

1878.  
January 7.

*Malabar Law—Karnavan, rights of—Tárwád property.*

A karnavan who appoints a junior anandravan as his agent to manage part of the tárwád property, collect rents, &c., can, on behalf of the Tárwád family, revoke this authority at any time and take the management into his own hands.

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(1) It is presumed that the cases alluded to are—*Arulu Mestri v. Wakuthu Chinnayan*, 2 Mad. H.C.R., 205; and *A. Rámachandra Ráu v. Indukuri Appalaráju*, 2 Mad. H.C.R., 451.

(2) Special Appeal No. 415 of 1877, against the decree of J. W. Reid, District Judge of North Malabar, dated 22nd January 1877, reversing the decree of the Subordinate Judge of North Malabar, dated 7th August 1876.

1878.  
January 7.

GOVINDAN  
v.  
KANNARAN.

THIS was a Special Appeal against the decree of J. W. Reid, District Judge of North Malabar, in Regular Appeal No. 337 of 1876, reversing the decree of the Subordinate Court of North Malabar, in O. S. No. 32 of 1874.

The plaintiffs, the karnavan and senior anandravan of Vari-kara Vadakevid Tárwád, sued to recover from defendant, their anandravan, certain tárwád property alleged to have been made over to him in Káni 1042 (September 1866) by plaintiffs' former Karnavans, Govindan and Chindan, on defendant agreeing to collect the rents, pay the revenue, maintain his branch of the family and render accounts yearly. Plaintiffs further stated that after Govindan and Chindan's death the 1st plaintiff in 1047 (1871-72) permitted defendant to continue in possession of the property on the same conditions. That defendant rendered accounts for one year, 1048 (1872-73) but since that time had refused to do so.

The defendant pleaded that there was a division in the tárwád into Chindan's branch and Govindan's branch, that plaintiffs belonged to Chindan's branch and defendant to Govindan's branch, that the distinction was, by custom and long usage, marked by calling the former Vadakevid and the latter Tekkevid, that by custom the whole property of the tárwád was assessed in the joint names of the karnavans of the branches, and the karnavans of each branch collected each half of the income and applied that half for the maintenance of their respective branches; that no accounts were rendered, and that the custom being an ancient one could not be modified or revoked.

The Subordinate Judge, on the ground that plaintiff had failed to show that the property sued for was entrusted to defendant as alleged in the plaint, dismissed the suit with costs.

The plaintiffs appealed.

The District Judge in reversing the decision of the First Court, said, "I consider that it is not necessary for plaintiffs to prove specifically a formal entrusting of the property to the defendant. Unless the defendant can prove a formal division of the common tárwád of plaintiffs and defendant, the 1st plaintiff is, by succession to the Karnavasthánam, incident to his being the senior male, entitled to return of the tárwád properties to his management. He is not, in absence of such formal division, bound by the arrangements of prior karnavans, and may revoke any permission

given by him, whether express or tacit, to defendant to manage any of the tárwád properties. The burthen of proving that 1st plaintiff, as senior male, has not this right which is so essential a principal of the local law of Marumakatáyam, lies on defendant . . . . . The present 1st plaintiff, it is to be noted, succeeded to the right of karnavan in 1047 (1871-72) and any temporary concession by him of the existence of such a peculiar practice as enjoyment of the produce in two halves does not, I think, invalidate his normal right to manage all the affairs of the tárwád . . . . . The case of *Appuni v. Ekanatha Shanguni* (1) lays down the law on this point very clearly, and as separate management by a branch karnavan of a táverai in that case was under a formal document, and this arrangement was only oral at the best, the application of the ruling in that authority to this case has all the more force."

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Against this decision the defendant preferred a Special Appeal on the grounds, among others, that the Lower Appellate Court erred in holding that the burthen of proof was on the defendant, and in disturbing a family arrangement long acted upon and beneficial to the family.'

Mr. *Handley* for the Appellant.

Mr. *Shepherd* for the Respondents.

The Court, INNES, J. and KINDERSLEY, J., delivered the following

JUDGMENT :—Mr. Handley contended that when a karnavan had, as in the present case, acquiesced in the continuance of the arrangements formerly made for holding the property of the tárwád in separate divisions, he should be held to be estopped from disturbing them in his life time. But, upon the findings of the Lower Appellate Court, the defendant's position is simply that of agent or manager of a portion of the family property, and it is competent to the family, as represented by the karnavan and senior anandravans, the plaintiffs in the suit, at any time to revoke that agency and require that the property, so in defendant's control and management, be replaced under the karnavan—see as to this the case of *Appuni v. Ekanatha Shanguni* (1). We reserved judgment because it was said that this case was similar to *Chandu v. Chathu Nambiar*, in which judgment had been reserved, but

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(1) 6 Mad. H.C.R., 401.

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the ground on which judgment was reserved in that case was that it was questionable whether it was one in which a declaratory decree ought to be given. There is no question of that kind in the present case, and we must dismiss the Special Appeal with costs.

*Appeal dismissed.*

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## FULL BENCH.

*Before Sir W. Morgan, C. J., Mr. Justice Innes and  
Mr. Justice Kindersley.*

1878.  
January 14.

VENKATASAMI NAIK (PLAINTIFF) SPECIAL APPELLANT v.  
KUPPAIYAN (14TH DEFENDANT) SPECIAL RESPONDENT (1).

*Execution—Sale—Personal debt—Co-sharer.*

Plaintiff's father (1st defendant) borrowed money to enable him to sue for the recovery of certain lands, and being unable to repay it, judgment was obtained against him, and the lands in suit were sold, and purchased at the Court sale by the 14th defendant. Plaintiff brought the present suit to set aside the sale of one-half of those lands on the ground that they formed his share, that he was a minor when his father incurred the debt, and that his share was not liable for debts incurred by his father. The Munsif gave a decree in favor of plaintiff. The 14th defendant appealed. The District Judge reversed the Munsif's decree.

On Special Appeal by the plaintiff, *Held*, that as the debt was the 1st defendant's personal debt, and the decree was against him personally, only his rights and interest in the property could be sold, and nothing beyond his rights would pass to the purchaser. *Dindiyal Lal v. Jagdip Narain Singh* (2) followed.

PLAINTIFF brought this suit to recover his one-half share of ancestral family property from the 1st defendant, his father, and from the other defendants (16 in number) his alienees. The facts were as follows—The plaintiff's father borrowed money to enable him to sue for the recovery of certain lands, and being unable to repay the sum lent judgment was obtained against him in a suit No. 472 of 1866 and the lands in suit were sold, and purchased at the Court sale by the 14th defendant Kuppaiyan.

Plaintiff sought in this suit to set aside the sale of one-half of those lands on the ground that they formed his share, that he was a minor when his father incurred the debt, and that his share was not liable for debts incurred by his father. The Munsif decreed

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(1) Special Appeal No. 452 of 1877, against the decree of E. F. Webster, District Judge of Trichinopoly, dated 16th February 1877, reversing the decree of the District Munsif of Trichinopoly, dated 15th January 1877.

(2) I. L. R., 3 Calc., 198.