Kekewich, J., held that the Court had power under its original jurisdiction to sanction the expenditure of a part of the money in repairing the said buildings. This decision is strongly supported by the observations made by the Judges in the case of *In re Hotchkys*(1), particularly by those at page 420, where Lindley, L. J., states:—"I quite agree with what Lord Justice Cotton has "said, that if it is shown that it is judicious to make repairs, and "the trustees come to the Court for authority to make them, that "authority will be given."

Having regard to the nature of the present application and the circumstances in which it is made, I have thought it right to express my opinion as to the principle involved and the procedure to be followed in the case and, as Sir W. Page Wood did in *Re Barrington's Settlement*(2), already cited, I must leave the trustees to file a plaint, if they should be so advised, to obtain the sanction of the Court.

There will be no answer to this petition.

The costs incurred in making this application will be paid out of the trust funds.

Rowlandson, attorney for applicants.

APPELLATE CIVIL.

Before Mr. Justice Best and Mr. Justice Subramania Ayyar.

KUNHAPPA NAMBIAR AND ANOTHER (DEFENDANTS NOS. 2 AND 3), APPELLANTS,

v.

SHRIDEVI KETTILAMMA (PLAINTIFF), RESPONDENT.*

1895. March 1, 5.

Malabar law—Partition of tarwad—Decree against karnavan on tarwad debt before partition—Execution after partition.

The karnavan of a Malabar tarwad borrowed money for purposes which rendered the debt binding on the tarwad. The creditor obtained a decree against the karnavan in 1879. In 1882 a partition of the tarwad property took place. In 1891 property which had fallen on partition to the present plaintiff's share was attached and brought to sale in execution of the decree of 1879. He was not joined as a party in the execution proceedings:

Held, that the Court sale did not bind the plaintiff.

(1) 32 Ch. D., 408, 420. (2) 1 J. & H., 142, 143.

* Second Appeal No. 1746 of 1894.

KUNHAPPA NAMBIAR v. SHRIDEVI KETTILAMMA.

SECOND APPEAL against the decree of A. Thompson, District Judge of North Malabar, in appeal suit No. 476 of 1893, affirming the decree of B. Cammaran Nayar, District Munsif of Tellicherry, in original suit No. 416 of 1892.

Suit to have set aside a sale of certain land which had taken place in 1891 in execution of a decree passed in 1879 against the defendant No. 1 and since transferred to defendant No. 2. Defendant No. 3 was the purchaser at the Court sale. Defendant No. 1 had been the karnavan of the tarwad, of which the plaintiff was a member, and it was found that the debt on account of which the decree was passed had been contracted by him for a purpose binding on the tarwad, but it appeared that in 1882 a partition had been entered into whereby the land in question had become the property of the plaintiff. The plaintiff had not been joined as a party in the execution proceedings.

The District Munsif held that the sale was not binding on the plaintiff and passed a decree accordingly. The District Judge affirmed his decision.

Defendants Nos. 2 and 3 preferred this second appeal.

Ryru Nambiar for appellants.

Sankara Menon for respondent.

JUDGMENT.—The appellants' vakil has brought to our notice the decision in *Krishnan Nambiar* v. *Krishnan Nair*(1), in which it

(1) Second Appeal No. 1323 of 1894 (unreported).

In this case the plaintiff, who was the appellant in the High Court, sued for a declaration that certain property was not liable to be attached in execution of a decree obtained in 1880. His case was that the judgment-debtor had not been sued in his capacity as karnavan of the plaintiff's tarwad so as to render the decree binding on the plaintiff as alleged by the defendants, that the debt for which the decree was passed had been incurred in 1878 for purposes not binding on the tarwad, that under a razinamah, dated 1877, and a karar or partition-deed, dated March 1882, the lands of the tarwad had been divided and the lands now in question had been allotted to the plaintiff's branch of the tarwad.

The second appeal came on for hearing on the 10th of December 1894 before MUTTUSAMI AYYAR and BEST, JJ. :—

JUDGMENT.—It is not denied that first defendant was the karnavan when he was sued. The description of him as Valia Nambiar is sufficient for holding that he was sued as karnavan. The Judge has also found that the debt was a tarwad debt.

It is contended that the evidence on which this finding is come to is contradictory. This is an objection we cannot allow in second appeal, the Judge's opinion being conclusive as to the weight due to evidence.

It is next argued that, though the karar B is subsequent to the date on which the debt was contracted, the razi J is prior to it, and it shows that the parties agreed in 1877 to a division to be effected within two months and that the community of interest between the tarvaries was to cease. We find, however, that the

was held that the state of things at the time when the debt was contracted must be looked to, and that a creditor cannot be affected by any subsequent arrangement in the family to which he was not a party; and that consequently subsequent partition in a tarwad is no ground for holding the divided members and their property not liable for the decree obtained against the karnavan, as such, prior to the partition. We see no reason to doubt the correctness of the above decision. But it is no authority for holding to be valid the sale of partitioned property in the absence of the parties to whom it has been apportioned.

For a sale to be binding on such persons, they should be expressly included as parties to the execution proceedings in which case they will have an opportunity of paying the debt and thus saving the property from sale. As they have ceased to be members of the tarwad, the original karnavan can no longer be held to represent them. The decision above referred to and relied on for appellant is therefore reconcilable with that in *Sankara* v. *Kelu*(1), which the Judge has followed.

This appeal fails and is dismissed with costs.

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razi remained incomplete and the karnavan declined to act upon it. In consequence of which there was a fresh suit which resulted in the karar B.

Moreover, there is nothing to show that the creditor knew of the razi J; nor is it referred to in the plaint.

Under these circumstances, we are unable to say that the Judge is not warranted in holding that the razi J did not alter the status of first defendant as karnavan.

It is further argued that even though razi J were incomplete, as the attachment was subsequent to karar B and the debt is due under a money decree merely, the property cannot be held liable.

We do not consider this contention to be valid. We have to look to the state of things at the time when the debt was contracted and at that time first defendant as karnavan was competent to bind all his anandravans. Any subsequent arrangement in the family cannot affect their obligation to the creditor who was no party to it.

This appeal fails and is dismissed with costs.

(1) I.L.R., 14 Mad., 29.