In the present case, the Taluk Board on which an obligatory duty to plant and preserve trees has been imposed, are exempt from liability on both the grounds, namely (*a*) that in the discharge of its duties it has not acted carelessly or negligently and (*b*) that the omission to remove the branches, even if it ought to have been done, is only non-feasance for which no action at the instance of a private individual lies. We therefore agree with the Courts below that the suit was rightly dismissed. The Second Appeal is dismissed with costs.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Abdur Rahim and Mr. Justice Napier.

CHEERU AND SIX OTHERS (PLAINTIFFS), APPELLANTS,

v.

NARAYANAN NAMBUDIRI AND FOUR OTHERS (DEFENDANTS), RESPONDENTS.*

1918, December 16.

Public Trust—Co-trustees—Act of one of two trustees without consent of the other—Grant of mortgage—Transaction, whether valid—Rule of act of majority of trustees, applicability of, to cases of two co-trustees.

One of two trustees of a public trust cannot grant a mortgage or effect any similar transaction in respect of the trust properties so as to bind the trust, without the consent of the other trustee even though the latter, on consultation, wrongly refuses his consent.

The rule that the act of a majority of the trustees is valid, provided they gave proper opportunity to the others to consider the advisability of the act in question, does not apply to cases where there are only two trustees, as one of them alone cannot constitute a majority.

Savitri Antarjanam v. *Raman Nambudri* (1901) I.L.R., 24 Mad., 296 and *Wilkinson* v. *Malin* (1832) 2 C. & J., 636, followed.

SECOND APPEAL against the decree of H. D. C. REILLY, the District Judge of North Malabar, in Appeal Suits Nos. 587 and 590 of 1915, preferred against the decree of U. RAMAPPA, the District Munsif of Kuttuparamba, in Original Suit No. 232 of 1914.

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* Second Appeals Nos. 46 and 47 of 1917.

CHEERU v. NARAYANAN NAMBUDIRI.

The first defendant, who is one of two Uralars of a devaswam to which the suit lands belong in jenm, granted a kanom over them to the fourth defendant who assigned his interest to the plaintiffs. The latter brought this suit to recover possession of the lands with arrears of rent from the third defendant who had purchased the lands on 10th March 1913 in Court auction in execution of a decree against the devaswam and had subsequently taken a lease of the same from both the first and the second defendants who were co-trustees of the devaswam. The second and third defendants contended, *inter alia*, that the kanom was not valid and binding on the trust as it was granted by the first defendant alone without the consent of the other co-Uralan, namely, the second defendant. It was found that the kanom deed was executed by the first defendant alone on the 5th April 1913 and the money raised thereby was used to get the auction sale to the third defendant set aside and to save the property for the devaswam. The District Munsif decreed the suit in favour of the plaintiffs. On appeals being preferred by the second and third defendants, the learned Acting District Judge reversed the decree and dismissed the suit, holding that the grant on kanom by only one of two Uralars without the consent of the other was invalid in law. The plaintiff preferred a Second Appeal which came on for hearing originally before ABDUR RAHIM and NAPIER, JJ., who called for a finding on the following issue :—

"*Whether the second defendant consented to the kanom being granted to the appellants although he did not join in its execution?*"

The learned Acting District Judge submitted a finding in the following terms :—

"My finding is that the second defendant never consented to the particular kanom in question being granted to appellants' assignor and at the time when the kanom deed was executed was not consenting to any kanom being granted to appellants' assignor."

On receipt of the above finding, the Second Appeal was posted for final hearing before ABDUR RAHIM and NAPIER, JJ.

K. P. M. Menon and *E. Ramaswami Ayyar* for the appellants.

C. Madhavan Nayar for the first, third and fifth respondents.

The JUDGMENT of the Court was delivered by

ABDUR RAHIM, J.—The learned District Judge has found that one of the co-Uralars did not give his consent to the grant of the kanom in question. But it is argued that, nevertheless the act of one trustee, if he has consulted the other trustee as to the grant of a mortgage or any similar transaction and that trustee wrongfully refused to join in the act, was valid. There is no express authority dealing with the case of two trustees, though there are a number of cases in which it has been held that where there are a number of trustees the act of the majority will be binding and valid if they had given a proper opportunity to the other trustees to consider the advisability of the act in question. But those decisions are based on the principle that unless the act of the majority was upheld in many cases the trust estate would suffer. In the case of two trustees, however, this principle will not apply because there is no majority. That is what is practically indicated in *Savitri Antarjanam* v. *Raman Nambudri*(1). The decision in *Wilkinson* v. *Malin*(2) which is the leading case on the subject bases it on the principle that the majority should have approved of the act. We do not think that we should be warranted in extending the principle to a case like the present where only one out of two trustees has exercised an act which ought to be done by both the trustees jointly.

But it is pointed out that the suit ought not to have been dismissed altogether and that the plaintiffs should have a charge for the amount actually advanced by him as it went to discharge a liability on some of the trust properties including the property in the suit. We think there is force in this contention and we, therefore, modify the decree of the lower Court by declaring a charge on the property in suit for the amount of Rs. 418-14-0. The appellants will bear the costs of this appeal.

K.R.

(1) (1901) I.L.R., 24 Mad., 296. (2) (1832) 2 C. & J., 636.